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ABORTION CLINIC VIOLENCE

HEARINGS

BEFORE THE
SUBCOMMITTEE ON
CRIME AND CRIMINAL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

APRIL 1 AND JUNE 10, 1993

Serial No. 39



Printed for the use of the Committee on the Judiciary

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United States. Congress.
House. Committee on the
Abortion clinic violence

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ABORTION CLINIC VIOLENCE

THURSDAY, APRIL 1, 1993

SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2237, Rayburn House Office Building, Hon. Charles E. Schumer (chairman of the subcommittee) presiding.

Present: Representatives Charles E. Schumer, Don Edwards, John Conyers, Jr., Dan Glickman, David Mann, F. James Sensenbrenner, Jr., Steven Schiff, and Jim Ramstad.

Also present: Andrew Fois, counsel; Gabrielle Gallegos, assistant counsel; Rachel Jacobson, secretary; Lyle Nirenberg, minority counsel; and Mark Curtis, congressional fellow.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Mr. SCHUMER. The hearing will coming to order.

First, the Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography or other similar methods. In accordance with rule V, permission will be granted unless there is objection.

Without objection.

Good morning. Today we are having a hearing on "Beyond Blockades" and what we should do about those. Why are we having this hearing? Well, it seems some have gone beyond peaceful means to try to exercise their rights to protest abortion and have had a dramatic change in tactics. Blockades are no longer the only thing done. Individuals have been targeted. Newly announced targets of the antichoice movement are individuals who provide or seek abortions rather than the system that makes abortion legal. The advocates of this strategy have intentionally targeted what they see as the weak link—their words—in the chain of legal abortions with tactics the originators have proudly given such language to as the "No Place To Hide Campaign."

What do they do? They trace doctors, staffers, and patients through their license plate numbers. They videotape and eavesdrop on them in their homes. They follow and harass them in stores, restaurants, and theaters. They bother their neighbors, picket their homes at all hours. They make phone calls to them both threatening and designed to jam lines.

We will hear testimony that certain doctors are—there are 50 people dialing their number over and over and over again immobilizing their phone lines because they might choose to perform

abortion. They are putting them on wanted posters, sending hate mail, following and harassing their children in school. In other words, a doctor performs an abortion, the people follow the children to school and tell the children's friends your daddy is a baby killer.

There has also been increased violence. We have seen a general and possibly related increase in abortion-related violence, death threats, vandalism, acid arson and now in one case, murder.

In the last few years, there were 28 bombings, 61 arsons, 266 bomb threats, 57 acid attacks in 1992 alone, 395 incidents of vandalism, 68 assaults and hundreds of death threats by phone and by mail.

In 1993 alone, 1 murder, 3 assaults, 3 arsons, with 2, 1 in Montana and 1 in Texas, burning the clinic to the ground, and 11 acid attacks.

So clearly the tactics have changed beyond blockades. Today we are here to examine that and see what should be done about it.

The damages to clinics in 1993 already total nearly \$2 million. These tactics are having a serious and sad effect. The stated goal of the tactics is to drive doctors and clinics out of the business of providing abortions and the tactics appear to be working. There are only 2,100 doctors left that perform abortions; 83 percent of U.S. counties are without a provider. Only 12.4 percent of medical schools routinely teach abortion. One-third of medical schools do not teach abortion at all. Two doctors stopped working at a Florida clinic where Dr. Gunn was murdered, for instance, the day after the shooting.

There also seem to be, and we will have to explore this at some length, insufficient State resources either in terms of law or in terms of will and ability to prevent these things from happening. Law enforcement is overwhelmed. Blockades, we know, are enormously expensive. Five million dollars in costs to Atlanta in 1991; \$1 million to Wichita in 1991; and \$1.5 million in 1992 in Milwaukee. Police cannot provide around-the-clock protection against the targeted 7-day a week stalking that presently occurs. As Dr. Tompkins will testify, he has had to pay for his own personal bodyguards.

Of the 28 cases of arson at abortion clinics during 1990 through 1992, only 3 resulted in an arrest.

Second, localities may not have adequate laws on the books. The State laws are inadequate to deal with the problem. Thirty States have enacted stalking laws; but many of these cover only domestic stalking and would not cover abortion providers.

Finally, even if State laws exist, the States must be willing to enforce them. As we will hear today from our first panel of witnesses, police sometimes are reluctant to arrest, and State judges who must face reelection are reluctant to sentence.

So the whole panoply of actions against the federally protected right to choose is at stake. Another reason that we have had this hearing is the Attorney General herself is interested in examining whether Federal help is appropriate for individuals targeted by antichoice harassment. She supports Federal protection both at and away from the clinic in the letter she sent to the subcommittee. She has stated that she wishes this area explored.

[Ms. Reno's letter follows:]



Office of the Attorney General
Washington, D. C. 20530

April 1, 1993

Honorable Charles E. Schumer
Chairman
Subcommittee on Crime and Criminal Justice
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I have previously expressed my strong support for Federal protection for women seeking access to medical facilities that perform abortions. Upon taking office, I asked attorneys in the Department of Justice to review the possible basis under existing federal law for providing such protection. That review has persuaded me that existing Federal law is inadequate and new legislation is necessary. This will be a top priority for the Department of Justice.

I have also concluded that it is necessary to extend the protections afforded by that new legislation to address conduct that occurs away from, as well as at the site of abortion clinics. There should be no distinction between an individual who uses force against a doctor or patient at an abortion clinic and one who does so away from an abortion clinic, so long as the intent of the individual is to prevent the doctor from providing, or the patient from receiving, an abortion at a clinic.

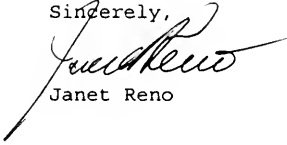
From a policy standpoint, prohibition of such conduct only if it occurred at a clinic would present an invitation to violators to move away from the clinic and engage in equally disruptive behavior. There have, of course, been reports that individuals intent on preventing abortions already engage in such behavior.

From a legal standpoint, there is no distinction between the authority of Congress to address such conduct whether it occurs near a clinic or elsewhere. The basis for Federal legislation in this area will be the authority of Congress to regulate interstate commerce. That authority extends easily to interference with activities at abortion clinics, which receive equipment and supplies through interstate commerce, and whose patients and staff frequently travel interstate. It also extends to activities that are intended to prevent women from receiving the services of an abortion clinic, wherever those activities occur. The effect on

interstate commerce is the same whether the interference occurs outside a woman's home or at the clinic door. Similarly, the effect on interference with health care providers to prevent the provision of services at a medical facility is the same regardless of where the interference occurs.

I endorse your efforts to pass legislation to address this very serious problem and look forward to working with you to craft final legislation that will bring protection against improper conduct to women who choose to terminate a pregnancy and those who provide these important services, while respecting the right of expression enshrined in the First Amendment.

Sincerely,



Janet Reno

Mr. SCHUMER. We all know last week this subcommittee favorably reported the Schumer-Morella access bill by a vote of 9 to 4. That is designed to address, in a narrow constitutional way, the blockades that physically prevent people from seeking reproductive services. The bill was crafted narrowly, praised by the ACLU and others for respecting the first amendment.

Today we have to consider whether this bill should be expanded to cover abortion-related threats, intimidation, and violence that occur at and beyond the clinic site. I am not at all certain that it should, given the fact that, first, it is going to be tough passing the bill alone and there is a very delicate balance that I think actually was improved at our subcommittee markup; and second, the great constitutional difficulties in expanding the bill are real. We do not have tests yet for whether antistalking laws can be made to be constitutional. That is hard to draw.

The antichoice groups feel, of course—and I guess the other thing I wanted to say is I have an understanding of the concerns that come from the other side. First of all, this subcommittee, I think, all of us, believe the right to protest is a sacred one. If I believed the bill our subcommittee passed last week or any proposed amendment to expanding the bill would impede the legitimate, all-American sacrosanct right to protest, I wouldn't pass the bill; plain and simple.

I also understand, coming from the perspective that I do, the anguish that motivates people on the other side, on the prolife side. If you truly believe abortion is murder—and some people do—then how far do you go in pushing the limits of society to get your views enacted into reality, even if the law doesn't back you up?

These are very, very difficult questions and they are questions that have occurred throughout many times in American history. I truly believe that anyone on either side who is on a moral high horse has not really thought the issue through as thoroughly as he or she might, because there aren't simple and clear-cut answers. These are difficult questions. That is why I have invited both sides to address the questions.

We have people from both sides here to discuss the right to abortion versus the first amendment right. That is what this hearing is about. The hearing is not about prochoice versus prolife. That is an issue that has been debated long and hard and will continue to be debated in this body.

So the question this hearing will address is where is the line? Where is the line crossed between education and intimidation? Is that illegal?

Is it trying to educate a doctor by yelling at him 24 hours a day, 7 days a week, you are a murderer, you are a murderer, you are a murderer; or is that intimidation? I think the latter. But then the question is, is that kind of intimidation illegal? We all know that the Constitution protects certain forms of coercive speech. There is the greatest difficulty we have.

Now I don't think any of us have a right to judge motive, but we have to protect individuals. To simply say these are difficult questions, we should not do anything, we shouldn't look at the issue is as bad as saying—as the other side saying forget the rights of the people who are protesting and understand their sincere motiva-

tions. We are going to go bull on ahead. People's rights are being infringed upon. We are going to hear that in the first panel. We see that in the statistics.

For a government to simply sit on its hands while one of its great rights is violated, is ignored, is a government that doesn't have much effect at all.

When dissenters turn dangerous and destructive, we must seek to protect the targets of dissent. So in closing, no one, least of all this Member, wants to stifle the free expression of dissent. We won't. But as Justice Holmes is credited as saying, your right to protest ends at the tip of my nose. Too many noses have been bashed in this right to protest. When legal protest and freedom of expression turn into criminal interference with another's legal right, it is our duty to intervene and to draw the line.

I would like to recognize the ranking minority member of the subcommittee, the gentleman from Wisconsin.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. Today we are having a hearing on a very touchy and emotional subject. We are going to be hearing testimony from people who have strongly held views on both sides of the issue. Even though I consider myself prolife, I respect those people who take the other side of the issue; and even though I oppose the legislation that was reported from this committee last week, I respect the arguments of the people who promote that legislation even though I disagree with them.

Let me say at the outset that in my opinion, violence has no place in any protest movement. However, I believe very strongly there are adequate State and Federal laws on the books to protect people against violence; laws against murder, laws against arson, laws against assault, laws against disorderly conduct. It seems to me also that rather than trying to solve the problems by passing a new law of questionable constitutionality, we should be enforcing the existing laws that are on the books and prosecuting those people who have been accused of violating those laws.

I would like to express my personal sympathy to Dr. Gunn's son. What the assailant of his father did set back the prolife movement a good 10 years. That type of activity has no place in the prolife movement, and practically everybody within that movement has condemned the assassination and the murder of Dr. Gunn in Pensacola, FL.

However, there has been violence and threats of violence on both sides of this issue. The chairman, in his opening statement, talked about wanted posters of physicians who perform abortions. I have one here put out by the other side of a wanted poster with the picture of the archbishop of Los Angeles, Roger Cardinal Maloney: Wanted, Cardinal Maloney, for crimes against humanity, hate crimes against women, attempting to deny women legal access to health care, teaching hatred of women, gay bashing, teaching ignorance instead of safe sex, undermining the Constitution by denying separation of church and State, union busting, and censorship.

So this is going on on both sides. There have been quotations in the newspaper within the last 2 weeks of people who take the prochoice saying "I would like a submachine gun on my roof, but short of that extreme measure, I am not sure what we do."

Now, those types of statements on the prochoice side are just as reprehensible as threats on the prolife side. It seems to me that everybody who is involved in this controversy ought to step back and cool it a bit so that we can debate the issue of whether abortion should be legal in the United States; and if so, under what circumstances and what restrictions, if any. Because that is the public policy question; and yes, indeed, the moral question. The people who are engaged in this debate, as well as we as elected representatives, are going to have to face and reach our own personal decisions; in the case of the Congress, what we think our constituency wants.

However, despite how strongly each of us holds our individual views on this particular issue, the Constitution of the United States, particularly the first amendment, still applies.

The first amendment was never intended to protect politically correct speech. We do not need a first amendment if the only thing it is to do is to protect speech that is politically correct. The right to protest and to picket and to stage sit-ins in order to bring to the public's attention what one's viewpoint is something that is ingrained in American society, for the past 100 years.

It seems to me that whatever we do in terms of responding to the problems that have arisen over the past few years, we should keep that in mind because we do not want to have a chilling effect on free speech. We do not want to prevent people from expressing that free speech to others.

And what we ought to do is we ought to start respecting other people's right to hold an opinion contrary to one's own; and if you disagree with the policy, work through the political system to change it. But the political system is going to have to be fair as well. I am afraid this hearing and the way it has been set up is not fair.

First of all, I think that the majority has got it backwards. Usually we hold hearings and have public input before we cast a vote on legislation rather than voting first and then asking the public what they think later on. We voted out the clinic bill, the clinic picketing bill last week. Now we are having a public hearing after the fact. I don't think that that is right.

Furthermore, the majority staff selected all but one of the witnesses at today's hearing. And the chairman specifically rejected a couple of suggestions that the minority made relative to who would be a good witness to testify at this hearing. That does not provide the clash of views that is necessary to get all of the arguments on both sides of the issue on the table. I think that is wrong.

So as a consequence, Representatives Gekas, Smith of Texas, Schiff and I are going to invoke a rarely used rule of the House of Representatives to require the chairman to schedule a minority day of hearings on this subject where the minority will select the witnesses to be heard, in order to get a balance of viewpoints. I would like to read the letter that I am going to turn over to the chairman invoking this rule, which is House rule XI clause (j)(1) in its entirety.

Dear Mr. Chairman: We write this letter regarding today's oversight hearing on abortion protests. Given the importance of the issues, the lack of witnesses to testify on other side(s) of the issues and the need for objective fact-finding, we hereby re-

quest that an additional hearing or hearings be held. We request that at least one day of hearings on the issue of abortion blockades and protests and the testimony at such a hearing of witnesses be selected by the minority. We make this request pursuant to the Rules of the House, Rule XI, Clause (j)(1). Although Ranking Member Sensenbrenner and staff repeatedly requested that several witnesses be added to the list of witnesses, the majority consistently refused and then only agreed on one minority witness of the ten total witnesses for today's hearing.

Additionally, Representative Schumer, who is prochoice and his staff were given the role of picking prolife witnesses for panel two, other than the one minority witness just referred to. Representative Schumer also selected the attorney in panel III representing the prolife viewpoint.

Moreover, at no time has the Subcommittee had an opportunity to hear objective testimony on conduct at clinic blockades and protests, violence by prochoice and prolife groups, cooperation between those groups and law enforcement, typical conduct at such protests by the vast majority of protestors, and on the ability of federal law enforcement and the federal judiciary to enforce and adjudicate the legislation under consideration in the Subcommittee.

This is signed by myself as the ranking minority member, Congressman Gekas of Pennsylvania, Lamar Smith of Texas, and Steve Schiff of New Mexico.

The final point I would like to make, Mr. Chairman, is that I would hope all the witnesses would be able to present their testimony as they see fit because given the opportunity to testify before Congress, it seems to me that each witness should decide for himself or for herself how to best present the testimony that he or she wishes to give us.

I would hope that the Chair would accommodate the wishes of the witnesses so that they can testify as to the facts as they see them, for our consideration.

Thank you.

Mr. SCHUMER. Thank you, Mr. Sensenbrenner.

Just two brief points. Number one, I think after you hear the testimony you will determine there is quite a clash of viewpoints here. There are five prolife and five prochoice witnesses. The minority submitted only two witnesses who could attend, both of whom had the same viewpoint. The one was granted.

As for the lawyer, we asked the minority five times for a lawyer, never got one. I think if you ask anybody in the prolife movement, the lawyer we have gotten is respected by all.

Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

I want to get along with the hearing so I will not make any kind of statement other than to say, Mr. Chairman, that I thought the Chair's opening statement was very moving and I subscribe to every word in it.

I also would like to add Mr. Schumer, my chairman, is known for his fairness. He has never been accused of being unfair and is not in this case at all.

Lastly, I am one of the few members left who was here in Congress in the early sixties when we had a similar situation in certain States of the Old Confederacy, I am sorry to say, where the people's constitutional rights were not being defended by the local officers, by the local police, or the State police; and pursuant to our constitutional responsibilities, we moved in and passed the omnibus civil rights bill of 1964 and the Voting Rights Act to enforce the Constitution.

I have a real sense of *deja vu*. Almost exactly the same things are going on with the prolife people, harassment, abuse, criminal conduct, that was going on in the Old South; and we are doing exactly the right thing in inserting the Federal Government, as we are required to do under the Constitution, into this very serious situation.

Mr. SCHUMER. Thank you, Mr. Edwards.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. I will be brief. I would like to say two things to my colleague, Mr. Edwards.

First, I support the idea in the wording to make sure we are not infringing upon people's right to peacefully protest. That is very important in this country. However, I acknowledge a modification of my position in the last Congress. We considered this.

There is a need for some type of access to Federal remedy if for any reason State and local remedies break down in the light of illegal action. I would see it as a backup myself, operationally, rather than the Federal Government being on the frontline. However, I am in agreement with you that the Federal Government should provide some access to remedy.

At the same time, I share some concern about this hearing. I will defer to your request to hear all of the witnesses and see if that remains the same. It is with respect, I point out, that we have already voted on the bill. Now we are going to have a hearing to consider it further, which I find a bit unusual.

It appears to me that there should have been greater input of the broader prolife movement in the selection of those witnesses who will be representing here in front of the public and media as representing the prolife view. I am a little concerned that if there is not a balance within the prolife movement, there will be a skewed idea, at least publicly, on the views of the prolife movement which I know very well do not countenance violent behavior. So I have that concern at the other end, Mr. Chairman.

But I appreciate you moving this issue, giving us this opportunity. I yield back.

Mr. SCHUMER. Let me address the gentleman who I think has always been fair and aboveboard on these issues. Number one, in terms of the prolife movement I did—and I said to the ranking member if he wanted to have somebody who came right out of the mainstream of the prolife movement, simply to make a point that 90 or 95 percent of the people who do protest do it legally and are not even before this bill, this is not prochoice/prolife. You will notice we don't have people out of the mainstream of the prochoice movement either. Lots of women's groups and proabortion groups wanted to testify. They are not here either. Mainly because this is not a prolife/prochoice hearing.

This hearing, as you acknowledge, is to explore the difficulties in trying to craft legislation that deals with the right to protest versus a guaranteed Federal right. It could have been another Federal right that some people might feel vehemently against.

For the record, these witnesses on the second panel, including the one chosen by the ranking member, are not intended to represent the breadth of the prolife movement. That was not the purpose of the hearing. In terms of holding the hearing when we did,

the only reason was for want of time. There possibly will be amendments in full committee that will attempt to expand the bill beyond blockading.

It has only come out since the death of Dr. Gunn, at least the committee was made fully aware of the fact, that blockading is not the only issue at stake here. I thought it would be worthwhile before the full committee marked up the Schumer-Morella bill—and I want to acknowledge the presence of Connie Morella here and thank her for coming—that it would be worthwhile to have a hearing.

If we were to determine this bill needed dramatic revision, to be expanded fully as a result of this hearing, I would not be adverse to going back to committee and reamending the bill and marking it up again. I don't have any problem with that. I thought we ought to explore it now. Given the blockades, given the other problems out there, I thought moving the original bill we had hearings on made sense.

Mr. Conyers.

Mr. CONYERS. Thank you very much, Mr. Chairman.

Ladies and gentlemen, members of this committee, this is a very sensitive and timely subject. I am very pleased that the Judiciary Committee has chosen to have a public forum where the American people can listen to the legal, the moral, the Federal, and the local implications of a very important issue that confronts us at this point in time.

I think that we need to recognize that what has happened now with the shooting of Dr. David Gunn has incrementally transformed the nature and subject of this discussion; because his shooting in front of a Pensacola clinic by an antichoice activist named Michael Griffin demonstrates that Operation Rescue and others are determined to prevent the delivery of reproductive services by any means necessary. Donald Tresham, executive director of Rescue America, stated that while he did not condone Griffin's action, "the casualties have always been on one side up until now."

So a strong Federal directive to protect not only a woman's right to choose, but her right to actualize that choice is not only necessary but could be the difference between life and death. As the antichoice groups correctly advocate, without the ability to realize the services, the right is useless. Women must also have access to information. Women must have access to counseling provided by the clinics. Without these resources, their ability to choose is once again seriously impaired.

The tactics of organized abortion opponents have disturbed not only women seeking to exercise their rights, but the communities in which these protests occur. The summer-long campaign of clinic blockades in Kansas in 1991 is a perfect example of the disruptive nature of these protests and their long-term ramifications. State and local police were forced to expend precious resources to deal with the protesters, making it very difficult for them to meet the policing needs of their communities.

Wichita spent in excess of a half-a-million dollars to respond to a 46-day blockade. Our colleague and distinguished member of this committee is probably—has a far more detail on that point.

The ongoing blockade in Milwaukee, WI, has cost that city in excess of \$1.5 million with over 2,000 arrests.

When the U.S. Supreme Court decided in the case of *Bray* and the *Alexandria Women's Health Clinic* that women seeking abortions were not covered by laws against blockaders, it created a huge problem for us as lawmakers. Picketing and protests are a viable means to communicate that should be protected under the first amendment. I doubt if there is a person in this room that would disagree with that assertion.

However, physical blockades, destruction of property, harassment and intimidation cross the boundary between protest and intimidation. We must act now to provide a clear Federal mandate for prosecuting these cases regardless of anyone's personal position on this subject. I have been slightly encouraged by the remarks of the members of the subcommittee preceding me in that regard. We must agree on the protection of women's constitutional rights.

So from one point of view, this is not an awfully difficult subject. We are the Judiciary Committee. We deal with criminal law. If there are crimes being committed or offenses that need to be criminalized, that is what the Judiciary Committee was created for. If in the determination of this committee we decide there needs to be adequate criminal laws added to the books because of the unusual tactics that are now apparently going to be standardized across the country, then it is our job to do so.

If, on the other hand, a majority feel that that is not the case, then, of course, we obviously will not do so.

So I am very pleased to be here to listen very carefully to all of the witnesses' testimony.

Mr. SCHUMER. I thank the gentleman for his thoughtful statement.

Mr. Ramstad.

Mr. RAMSTAD. Mr. Chairman, this legislation is of particular and imminent interest to the people I represent given the recent headlines back home in the Minnesota newspapers, "Operation Rescue's next stop here; Operation Rescue to invade Minnesota this summer." It has been no secret Operation Rescue is going to train and mobilize impact teams this summer in Minneapolis and St. Paul. In fact, one of today's witnesses from Minnesota has been informed by local law enforcement authorities she will be an impact team target.

Certainly, Mr. Chairman, the people of our State welcome anyone to come to the land of 10,000 lakes. They have chosen the best time of year, the summer. We encourage them to come and spend their money. Our economy could use the tourist dollars. But, Mr. Chairman, we do not welcome violence or physical intimidation or interference with a woman's constitutional rights. Their prayer vigils are welcome; peaceful picketing and expression of other first amendment rights are welcome.

Any kind of violence, destruction of property or interference with the constitutional rights of others will simply not be tolerated. As long as the constitutional right to an abortion exists, access to medical facilities will remain a component of that right and it will be protected in Minnesota. The legislation before this subcommittee is responsive to increasingly frequent attempts to shut down women's

health clinics by physical obstruction and trample on the lawful rights of women.

I might add, Mr. Chairman, not all Minnesotans have the welcome mat out for Operation Rescue. In fact, our highly respected Roman Catholic archbishop, John Roach, said last week, I have the headline, "Roach won't welcome Operation Rescue this summer."

In addition, Archbishop Roach was quoted as saying, and now I am quoting, he doesn't consider Operation Rescue to be a positive element in the prolife movement. He cited the experiences of Los Angeles, Buffalo, and Milwaukee and noted that whenever Operation Rescue has been involved, violence has tended to become, again I am quoting, violence has tended to become part of the issue.

The archbishop's comments are not surprising in light of the rhetoric we have seen from the founder of Operation Rescue. He said recently, again I am quoting, he vowed to make the doctor's life a living hell. Mr. Chairman, we do not treat people like that in Minneapolis, MN, not even politicians.

The harassment techniques and violence aimed at doctors, their families, reproductive health centers, humiliating doctor's children in school, calling a doctor's parents to falsely tell of a doctor's death, clinic bombings, other arsons, vandalism, the death threats, the stalking, the burglaries, such acts will not be well received in Minnesota. In Minnesota, we respect the dignity of our fellow men and women and live by the rule of law.

So Operation Rescue, welcome to Minnesota, but keep it peaceful and respectful of the rights of others. Anything less will not be tolerated.

Thank you, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Ramstad.

Mr. Glickman, the final opening statement.

Mr. GLICKMAN. First of all, let me say there are many things one can say about the chairman of this subcommittee, but one thing you must say is he is a very fair individual. I think these hearings have been constructed extremely fairly, both in terms of numbers, and in terms of qualitative and quantitative aspects of who is here testifying. I think, Chuck, you have done it correctly. I want to support you on that.

I don't think, however, that you can talk about this issue of violence without talking a little bit about the underlying issue of abortion. While this is not a prochoice/prolife hearing, as Mr. Schumer said, I don't think you can consider this issue in the abstract. I come from Wichita. We had the first major Operation Rescue demonstration there.

I want to talk about it as I see it and as I feel it for my constituents. Let me start by saying I am absolutely torn by this issue. I think my constituents are torn by this issue. I think America is torn by this issue.

I don't think in America we have seen anything like this for several generations. It is balkanizing this country, taking a cue a little bit from what is happening in another part of the world. There is increasing violence in America, anyway, with the proliferation of guns and weapons. What disturbs me is that you take this issue

which so divides the country and add it to the increasing violence taking place in America and the recipe for disaster is here.

We are here discussing an issue that is dividing this country reminiscent of the way the country was divided during the Civil War. It is proving to be just as divisive, even though the issues are different. Like a war, it certainly has become violent.

It is obvious by the need for this type of hearing that it is imperative we come together on some common ground to start a dialog of understanding and a commitment to working together to reach workable and acceptable solutions wherever possible, looking to stopping the violence and to laws defining a Federal remedy.

I am a firm believer that we in the Government are in the business of protecting citizens' constitutional rights. Abortion is a right guaranteed by the Constitution. But I also subscribe to the philosophy espoused by then-candidate Clinton who said abortion should be safe, legal, and rare.

I recognize this is a deeply moral and philosophical issue that must be individually determined. However, I think we should be expending at least as much energy dealing with this issue in other ways. We need to educate and provide resources to prevent unwanted pregnancies in the first place. Education is a valuable tool. We should not be afraid to start education at a young age, because given the statistics of the ages of the young girls—and I use that word deliberately—who are having abortions, they are learning how to get pregnant at an early age.

We should also promote adoption and other alternatives, looking at our tax laws and our health care system, for example, to encourage that abortion will not occur in the first place. We should look to alternatives which will help us come to some resolution in this disturbing battle; and the prolife and prochoice communities can work together on these things. What I am saying is government should be doing more to provide responsible alternatives to abortion. Government should not be in the position of actively encouraging abortions.

Having said all this, I am appalled by the recent violence we have witnessed. There is no excuse or rationale that will convince me that killing a doctor or bombing a clinic or setting fire to buildings is an acceptable response to a difference in beliefs. This is far beyond any civil disobedience our Nation has witnessed in the fight for civil rights. It is not a protected first amendment right to spray gas into an establishment, for instance, and purposely destroy property. This is not what our great civil rights leaders did in the 1960's.

Furthermore, it is not a protected first amendment right to harass and threaten people into submission. I think it is incomprehensible how it can be morally justified that in the name of life, people are destroying the lives and peace of innocent family members by going to children's schools and showing up at spouse's workplaces. Some say the end justifies the means because of the deep moral issues involved. But in a democracy, means never justify ends. That is the hallmark of a totalitarian society and under that theory, two wrongs make a right. That is not my belief about America.

This subject and this unnecessary violence is all too familiar to me and my fellow citizens from Wichita. As most of you remember,

as Mr. Conyers talked about, we were targeted as an Operation Rescue city in the summer of 1991. Although many good, hard-working, nonviolent Kansans came out to protest, there were thousands of out-of-towners bused into Wichita, and the result was destruction of property and harassment of some innocent citizens.

The transformation of our peaceful city into a virtual war zone was incredible. I cannot protect this kind of protest. Sadly, the extremism like what we witnessed in Wichita has only accelerated. How are we going to stop this constant battle in cities around the country? I really do not know.

There are deep moral divisions. Prochoice and prolife people or they are called—every side uses terms in order to buttress their own position must develop a dialog.

I know, however, violence and destruction and murder certainly are not helping anyone. It certainly is not persuading people in the nonviolent dialog-based manner that was envisioned by the first amendment. I think by putting our heads together instead of our weapons, we could stop the violence and protect everybody's constitutional rights.

I thank you for allowing me to make this statement.

Mr. SCHUMER. Thank you, Mr. Glickman. I appreciate your impassioned, carefully thought-out statement.

Mr. Mann, our last member who has been here has decided not to give an opening statement.

Now I will call the first panel of witnesses. Let me say while they come up, any legislation such as the blockade legislation will be equally applicable to prolife and prochoice violence wherever it occurs. Wanted posters, those are protected by the first amendment. No one is trying to stop those on either side. Some of these other things, they will not be.

Our first panel of witnesses are people who have been victims of clinic blockades and violence. First is David Gunn, Jr., of Birmingham, AL. Mr. Gunn is the 22-year-old son of Dr. David Gunn the physician who was recently murdered outside of an abortion clinic in Pensacola, FL. For the past several years, he traveled through the South with his father to clinics where he performed abortions. He is here because many of the tactics we are examining today were used against Dr. Gunn before his murder. Many types of harassment and other types of tactics that escalated into murder. He is going to discuss them.

Our second panelist is Dr. Norman Tompkins. He is a physician who performs legal abortions as only a small part of his Dallas, TX, practice. Dr. Tompkins has also been targeted by protesters and currently has a case pending in Texas State court seeking injunctive relief. He will tell us in detail of his harrowing experiences. Our third witness is Ms. Jeri Rasmussen, executive director of the Midwest Health Center for Women located in Minneapolis, MN. Ms. Rasmussen has been targeted before by antiabortion activists and has been warned that she will be the focus of Operation Rescue impact teams this summer.

Finally, Ms. Susan Hill, president of the National Women's Health Organization in Raleigh, NC. Her organization operates abortion clinics in the Midwest and South. The doctors and staffs have been the target of protests and attacks. Some of the clinics

have been damaged extensively by acid and arson. She will discuss the difficulties faced by clinics in rural settings including the problems with getting law enforcement to try to help the clinics.

I want to thank each of the witnesses for being here this morning. Of course, especially you, David Gunn. We know the last few weeks have been a difficult and painful time for you and your family. All of your prepared statements have been put into the record.

Please try to limit your testimony to 5 minutes.

Our first witness is Mr. David Gunn.

STATEMENT OF DAVID GUNN, JR.

Mr. GUNN. I just want to say thanks for having me here. I don't have anything prepared. I would like to say my father—

Mr. SCHUMER. Bring the microphone a little closer to you so everyone can hear you.

Mr. GUNN [continuing]. My father had been targeted by these organizations for some time in early 1992. He was the victim of wanted posters and on these posters were listed his schedule, the clinics he went to, his time of arrival and departure. It takes diligent research to find out such things about these doctors that I don't think is covered under the first amendment. That is invasion of privacy and harassment.

I would also like to say I have Operation Rescue's abortion-busters manual which is their manifesto of terrorist acts. It is this right here. It outlines how to achieve getting information on physicians, how to use tax records, malpractice suits, license plates, and other various means to track and trail these citizens.

My father told me numerous times about the harassment that he was receiving. He was being followed from clinic to clinic. I know he would sometimes divert his route to compensate for that following. He had begun to arm himself because he was feeling so threatened by these people that he was afraid they would pull him over somehow on the side of the road and he would have no way to defend himself.

I know in Pensacola, the Friday before the shooting, a clinic worker advised the Pensacola authorities that the harassment was getting worse; that he was being followed to restaurants, he was being harassed in restaurants. He didn't have a home. He couldn't have a home. He lived out of hotel rooms because of this harassment. They did nothing. They did not offer any help. They said that is not our problem, we do not see it as a threat; we will—see what ignorance has brought about now.

These antichoice organizations, I can't refer to them as prolife any more, they are antichoice—are employing terrorist tactics. They are employing harassment, intimidation; the same tactics we saw the Ku Klux Klan use in the early 1960's. That was put a stop to. I think this also should be put a stop to.

It should not be protected under the first amendment. They are not—I mean, they are harassing. They are invading privacy. They are following, stalking these doctors. My father was murdered because no one took the appropriate measures beforehand to prevent this. If we could have done this 2 years ago, this probably would not have happened now.

I might say that he has been viewed as only an abortionist, not as a man. He was a real person. The organizations have said, well, we don't condone this, but it was morally justified. That is condoning. That is only allowing it to be furthered. If appropriate measures are not taken, this will happen again in other cities. I feel firmly about that.

Thank you.

Mr. SCHUMER. Thank you. Dr. Tompkins.

STATEMENT OF NORMAN T. TOMPKINS, M.D., MARGOT PEROT CENTER, PRESBYTERIAN HOSPITAL, DALLAS, TX

Dr. TOMPKINS. I am Dr. Norman Tompkins, an obstetrician and gynecologist in private practice in Dallas, TX. During my practice I delivered over 8,000 babies, including some 600 who were placed for adoption. A very limited portion of my practice, approximately 5 percent, is providing first-trimester abortion services to my existing patients. This procedure is made available only after counseling and never on a repeat basis.

Over the last 6 months my life has changed dramatically. In early fall I was approached by two representatives of a local abortion group called Dallas Plan, P-l-a-n. I was told if I agreed not to perform abortions in the clinic that provided abortion services, not to pursue criminal or civil charges against anyone that may attempt to prevent me from providing abortion services and let that group have my picture for their use in their files, they would leave me alone. Otherwise I was to be the target of focus activity by this group similar to that directed against other physicians in the Dallas area.

When I refused to succumb to the ultimatum, the activities directed against me and my family began. Flyers were distributed throughout Presbyterian Hospital where I have an office; they described me as the spirit of the murderer of Presbyterian Hospital and included my photograph, home and office addresses and telephone numbers. Wanted posters were put up all over Dallas with my photograph, home and workplaces and phone numbers labeling me as an abortionist which I am not. I am an Ob-Gyn in private practice. I became a target of focus activities, which include picketing at my hospital during the week, and my home on weekends and during the week and at my church on Sundays. Even my wife has been the target of focus picketing at her office where she works for the Boy Scouts of America.

I have received harassing and threatening telephone calls at my office and at my home at all hours of the day and night. My wife received similar calls at her office.

Typically we receive between 5 to 15 telephone calls per day. We have been receiving hate mail. We have been kept under surveillance at our home as antiabortion sympathizers sit behind our home with binoculars. We have been followed to work, to church, to the grocery store, to dinner parties and even to the police station. The antiabortion activities that have been directed towards me have deprived us of any sense of privacy.

We cannot attend church services without being escorted by the police to and from our car. On February 7, we were unable to at-

tend services at all because the police would not guarantee our protection.

My practice has been adversely affected by the antiabortion activities focused on me. This group has done everything it could to threaten my wife's employment with the Boy Scouts of America. Over the last 6 months, the activities directed against me and my family have escalated. They have now reached the point where for our own safety we took vigorous security measures which include the use of bodyguards. These measures are necessary because of direct threats from antiabortion sympathizers, threats including telling my neighbors they should shoot me, threats to shoot my wife, and telephone and mail threats including a recent letter from the Ku Klux Klan.

In short, I have become a prisoner in my own home because I believe a woman has the right to choose. My wife and I are currently pursuing a civil action to put a temporary injunction in place which would provide some protection to us. Unfortunately, the criminal laws of the State of Texas do not protect us.

I urge this committee to favorably recommend legislation that would protect physicians and other health care providers who perform legal medical services.

I fear that without such legislation, physicians such as myself will be unable to protect ourselves and will either be killed, seriously injured or forced to provide medical services as one particular group directs without regard to the patient's best interests or to our constitutional rights.

Thank you.

Mr. SCHUMER. Thank you, Dr. Tompkins.

Ms. Rasmussen.

**STATEMENT OF JERI RASMUSSEN, EXECUTIVE DIRECTOR,
MIDWEST HEALTH CENTER FOR WOMEN, MINNEAPOLIS, MN**

Ms. RASMUSSEN. Mr. Chairman, members of the committee, I have been actively involved in the struggle for reproductive choices since 1968 as an organizer, speaker, chief lobbyist both State and Federal; and since 1988 as the director of Midwest Health Center for Women in Minneapolis, MN. Midwest is a nonprofit clinic. I do not intend—

Mr. CONYERS. Could you pull your mike forward, Ms. Rasmussen?

Ms. RASMUSSEN. I am not going to spend any time today on what has happened at the clinic scene in Minnesota but it is not unlike other States. I am proud of the work I do. I feel privileged to have as my life's work the role of dignifying the choices women make. What we are experiencing today is 20 years of naming women and health care providers murderers, thus creating a climate for the insanity that prevails today.

I hope to make real for you what it is like to go to work in the morning and not know if you will make it home at night; and when you are home, to know that the latter-day Ku Klux Klan has plans for you; how one checks one's yard daily and car to see if someone stuffed a bomb into the tailpipe; looking at your mail closely to see if it has a postmark and a return address—normalizing life in this manner.

I ask you to consider my life for the past 3 years as I have struggled with hate-filled action directed at me and at my home. Why this terrorism? Why this hatred? Because I am employed as the director of a woman's health clinic.

In March 1990, I received a telephone call from a neighbor telling me about a flyer that had been left at his home. The flyer contained no disclaimer. It purported to inform in graphic misinformation how I regularly "kill or murder babies" at Midwest Health Center for Women. The flyer invited anyone to visit, call, write or pray for me at my home or at the clinic. I was shocked. My home has always been a refuge, private, and a place of comfort and enjoyment.

My name was never listed in the telephone directory. I enjoyed privacy. But that all changed when a former high school classmate filled with some kind of religious zeal wrote me a letter and subsequently revealed my home address to her associates. She has robbed me of something very precious: my privacy.

I am and I remain a private person, yet I am changed.

I endured six incursions into my neighborhood and finally sought an ordinance that would protect targeted picketing of a private residence. It was enacted. It did not stop anyone.

In 1990, a new law was passed in Minnesota providing for an individual to seek an order for protection based upon harassment. What you had to do was to be able to identify the people in order to cease the harassment. The police would not identify people for me. I had to photograph and compare photos with other clinics to help establish who they were before I could even go to court.

I was stalked on the freeway for a considerable frightening distance by a St. Paul City firefighter. He and his wife have been at my home for over 3 years.

I have been assailed by him in a restaurant, on my walking path and elsewhere. I have ugly signs left on my property. Thirty men at my home, one with an attack dog, were not considered threatening by the police.

This past fall, my class reunion was a scene of leafleting. I would like to show you what it looks like.

And picketing. Individuals posing as a documentary team attempted to force their way into my class reunion to steal the list of names and photograph the attendees. I have been perplexed when State laws do not seem to apply and vexed when ordinances are passed and fail. After 2½ years of harassment, I returned once again to my city council and requested the creation of a picket-free or no picketing zone on my block and also requested that they give consideration to establishing an antistalking ordinance. My city council has been very cooperative.

However, at that hearing, speaking against the ordinance, were Missionaries to the Preborn from Iowa, Lambs of Christ from the Dakotas, Operation Rescue people from Minnesota, the Pro-Life Ministry, and God knows where else from. They testified it made no difference where I lived or moved, that they would follow me until I got out of the baby killing business. As of December 1993, my street is posted as a no picketing zone for 1 year.

In seeking a new restraining order because the one granted expired, the judge was asked by my protagonists whether they could

conduct a candlelight vigil down my street on Christmas Eve. The judge said no. Not counting court and city council appearances, there were 18 or more assaults on my home and privacy during the last 3 years.

I will not go into that.

I just want you to know I feel an overwhelming sense of outrage that anyone assumes they have a superior religious viewpoint. That makes me fear down deep. History is replete with vicious and intolerant acts committed in the name of someone's God. I suspect if this were the Middle Ages they would be demanding that I be burned at the stake. Do I fear for my personal safety, my life? Yes, indeed I do.

Less than 24 hours after Dr. Gunn's murder, I had nails poured in my driveway, mixed with snow and ice. Two Minnesota doctors had the same thing happen. I received a telephone call at 1:10 a.m. telling me not to kill babies and sometime before 7 a.m. that morning, someone hurled a huge hunk of cement block through my dining room window with a note telling me not to kill babies.

The force of this hurled cement sent shattered glass into my living room nearly 30 feet away.

Yes, I am changed. I look over my shoulder more often. I am short with my staff. I have moved my bed for safety. I am considering a gun which seems just abhorrent to me and a bulletproof vest on especially bad days. My life has changed in other ways. Let me tell you some of them.

I am no longer free to enjoy a nightly walk in the summer, to hear the frogs and crickets and see the fireflies on my path. I rarely walk any more. If I do, the walks have an edge to them. Did that car slow down because of the uncertainty of where to turn? Would anyone hear me with windows closed if I called out?

When my phone goes dead, has someone cut the wires or is it just malfunctioning? My mother-in-law has a very advanced case of glaucoma. Her familiarity with my home and neighborhood made it possible for her to enjoy the out-of-doors and help me. She is afraid to be at my home. We never locked our doors. Now I have a sophisticated security system and keys. Air-conditioning was installed last summer because leaving the windows open presented a risk. I have lived in my home for over 30 years.

I want to conclude my statement with the plea to the Congress of the United States to say no to these domestic terrorists. We need the Congress of the United States to understand what this is about, to understand as Congress now does that rape is not something women enjoy and men brag about and that battered women is a societal horror that is now understood. Congress is learning the meaning of sexual harassment.

I ask after 15 years of blatant attacks Congress has the responsibility and the obligation to make certain that harassment, terrorism, and murder are not equated with free speech or first amendment guarantees and that the penalties for interfering with the free exercise of one's right to privacy and safety is an offense with severe penalties.

Do I fear? Does my family fear for my personal safety, my life? The answer is yes.

Thank you.

Mr. SCHUMER. We will have to take a 5- or 10-minute break. We will come right back. We are adjourned until 10:25.

[Recess.]

Mr. SCHUMER. Our hearing will resume with the testimony of Ms. Hill.

STATEMENT OF SUSAN HILL, PRESIDENT, NATIONAL WOMEN'S HEALTH ORGANIZATION, RALEIGH, NC

Ms. HILL. My thanks first to the members of the committee for allowing us to testify on the issues of violence and harassment against abortion providers in this country.

Mr. SCHUMER. If you could pull the microphone closer? The microphones on the table seem to be a little muted today.

Ms. HILL. We believe this is a campaign of terrorism that has been allowed to fester in every city where there is a clinic.

Dr. David Gunn had worked with our Columbus, GA, clinic since 1985. I received a phone call on March 10, 1993, with a simple frightening message "They shot Dr. Gunn. He is dead." In reflecting on this moment, I realize that the shocking thing about the message was not the incident; it was that for a moment I thought it was about two other physicians who had been living under death threats for months. We had believed that Dr. Gunn was in less danger than five of our other physicians.

How is it possible that in a country founded on religious freedom and individuals rights, we providers of abortion care have come to live in fear of religious groups, who pronounce themselves the judge and jury of our fate?

Abortion providers have been told to use the legal system and we have to no avail. My organization has obtained Federal court injunctions against protester's illegal activity. We have obtained State court injunctions against unlawful activity by protesters. We have obtained over 1,000 arrests. We have spent over \$500,000 in legal fees. We have been awarded damages and attorney's fees of over \$100,000. We have collected zero. In Delaware, out of 255 protesters arrested, the average fine was \$25 with no jail time. In Ft. Wayne, IN, 455 protesters were arrested. All charges were dropped. In Milwaukee, WI, in the last year, there were 2,100 arrests with only 20 prosecutions. All charges were dropped.

We are attacked by a group of people who have been taught how to be judgment-proof, and how to beat the system. They have workshops on beating the system. They do it with pride and defiance.

We have lost scores of physicians and staff due to the direct threats to themselves and their families. Antiabortion activists have camped in front of physician's and administration's homes all night long. They have rolled cement-filled barrels across driveways, blocking the ingress and egress of a private home. Doctors have had to walk through woods behind their houses in order to get out of their houses safely. Antiabortion activists have posed as interested home buyers, in order to obtain names and identities of children of physicians. They have stalked children on their way to school, at school and after school. Several children have been driven to and from school by local police due to the stalking. They have stalked a physician's 80-year-old mother, picketed her home, and called her late at night to report that her son had been killed, a

false story. Wanted posters, identical to Dr. Gunn's have been circulated on most of our physicians, and sent to their homes with warnings to their families. They called and harassed my twin sister dying of cancer, telling her that she was dying because of what I did. They have even picketed the graveside services of a friend who ran women's clinics in Texas. As we drove up to the grave, I realized that the antiabortion picketer was a protester we had arrested in Delaware the year before. These are not isolated incidents. These are not individuals acting alone. I have seen missionaries for the Preborn and Lambs of Christ in Fargo, ND, then seen the same people a few weeks later in Milwaukee, WI, and later in Ft. Wayne, IN. They claim no income, but they travel easily and quickly.

We have had arsons at eight of our facilities and only one arrest by the Federal authorities. That arrest was of an antiabortion activist, Marjorie Reed, who was fleeing arson charges, concerning a clinic fire in Ohio. The real story is that Ms. Reed was being given refuge by another antiabortion activist in New Jersey in what they referred to as a safehouse. None of the people hiding her were charged with anything.

You must not believe these are all well meaning local churchgoers who are merely exercising their first amendment rights. This is a holy war. There is no difference between this group of traveling terrorists and groups of terrorists in the Middle East. These are terrorists who believe the law of God is above all other laws. Check the transcripts of court hearings across the country in antiabortion cases. God's law is used throughout all of their defense.

Dr. Gunn tried to get help. He begged local law enforcement officials to help him against the threats. No one believed him. There are hundreds of physicians and health care workers who beseech you to believe them now. We are in danger. Our families are in danger. This body must send a clear message that it will not tolerate or condone terrorism in our country.

There must be a stronger Federal law. Local law enforcement officials must see that this is serious and that abortion providers do not deserve this. Providers have been told by local police that if we can't take the heat, we should quit. They commonly ask us to close our clinics for the day so that they won't have to deal with the problem. They have told us they are tired of spending so much money arresting these people, only to see charges dropped. One prosecutor has refused repeatedly to prosecute any trespassers in Milwaukee. We have petitioned two different courts in two States for special prosecutions, due to the unwillingness of prosecutors to prosecute.

This is a deadly game. It cannot continue. There is a Michael Griffin in each town, in front of each clinic. Clinic personnel are arming themselves. All of our doctors have requested bulletproof vests. There has been total inaction on the part of legislative bodies and law enforcement officials. Antiabortion activists boast that they can do anything to us without fear of stiff penalties. There is a revolving door concerning complaints against antiabortion protesters in most cities in this country.

Federal judges and State judges, when faced with the evidence in their courts, have recognized the problem and escalation of violence. They know violence when they see it. We pray that you know

it when you see it, and that you send a message to all Americans that moral and religious wars should be fought through debate and democracy, not by terrorism and violence. It is too late for Dr. Gunn. It is almost too late for us.

Thank you.

Mr. SCHUMER. Thank you, Ms. Hill.

I want to thank each of the witnesses for what I certainly found to be very moving and persuasive testimony in terms of the problem and the need to do our best to do something. I want to tell you, I will make every effort to see that something is done to stop what is going on here as long as we can constitutionally do it.

I also want to tell you before we get into the questions—I neglected to do this in my opening statement—that the Attorney General is sympathetic to you as well. I would like to read into the record a letter she wrote to me on the morning of this hearing.

Dear Mr. Chairman: I previously expressed my strong support for Federal protection for women seeking access to medical facilities that perform abortions. Upon taking office, I asked attorneys in the Department of Justice to review the possible basis under existing Federal law for providing such protection. That review has persuaded me that existing Federal law is inadequate and new legislation is necessary. This will be a top priority for the Department of Justice.

I have also concluded that it is necessary to extend the protections afforded by that new legislation to address conduct that occurs away from, as well as at the site of abortion clinics. There should be no distinction between an individual who uses force against a doctor or patient at an abortion clinic and one who does so away from an abortion clinic, so long as the intent of the individual is to prevent the doctor from providing, or the patient from receiving, an abortion at a clinic.

From a policy standpoint, prohibition of such conduct only if it occurred at a clinic would present an invitation to violators to move away from the clinic and engage in equally disruptive behavior. There have, of course, been reports that individuals intent on preventing abortions already engage in such behavior.

Your testimony has made that quite clear.

From a legal standpoint, there is no distinction between the authority of Congress to address such conduct whether it occurs near a clinic or elsewhere. The basis for Federal legislation in this area will be the authority of Congress to regulate interstate commerce. That authority extends easily to interference with activities at abortion clinics, which receive equipment and supplies through interstate commerce, and whose patients and staff frequently travel interstate. It also extends to activities that are intended to prevent women from receiving the services of an abortion clinic, wherever those activities occur. The effect on interstate commerce is the same whether the interference occurs outside a woman's home or at the clinic door. Similarly, the effect on interference with health care providers to prevent the provision of services at a medical facility is the same regardless of whether the interference occurs.

I endorse your efforts to pass legislation to address this very serious problem and look forward to working with you to craft final legislation that will bring protection against improper conduct to women who choose to terminate a pregnancy and those who provide these important services, while respecting the right of expression enshrined in the First Amendment.

That has to come as good news at least to people like yourselves who suffered for a long time.

Let me go to my questions.

David Gunn first. David, did your father fear death, or did you fear death for him, before he was shot and for how long before?

Mr. GUNN. I did. He was carrying a gun, so he obviously had some fears and doubts. I don't think that he actually thought they would go that far. I'd even talked to him Sunday beforehand about what would happen if he were to get shot, because he told me that

someone had been following him in Pensacola and had actually approached his car.

Mr. SCHUMER. The kinds of harassment we have heard Ms. Rasmussen, Ms. Hill, and Dr. Tompkins talk about, was your father subject to some types of that kind of harassment?

Mr. GUNN. He was receiving hate mail. He was on the wanted poster. Like I said, they harassed him where he would eat.

Mr. SCHUMER. You mentioned that. What do you mean they would harass him where he ate? Of course, receiving hate mail, having your face on a poster, I have no doubt that that is constitutionally protected. We could not prevent that, unless the poster had a threat, some kind of specific threat.

Mr. GUNN. Like he was in a restaurant eating. A group of those individuals came in and started shouting, you know, "baby killer," what have you. During his——

Mr. SCHUMER. Did he ever, to your knowledge, receive specific threats, like, "if you continue this, you will be in trouble?"

Mr. GUNN. I am sure that he did, yes.

Mr. SCHUMER. Dr. Tompkins, the same group, the Dallas Pro-life Action Network that targeted you has also gone after other doctors. Have any of them signed these statements to stop the group from doing what they are doing?

Dr. TOMPKINS. Yes, Mr. Chairman, they have. There were six physicians ahead of me. They all signed the petition.

Mr. SCHUMER. Every one of them signed? You were the first not to?

Dr. TOMPKINS. Yes. There were 18 more behind me. They managed to do the same thing, too.

Mr. SCHUMER. I guess since what has happened to you, and you have been unable to stop it, you are going to be unfortunately some kind of lesson to them to sign, as well, unless they have extremely strong principles.

Dr. TOMPKINS. Yes.

Mr. SCHUMER. Do you know, is this Dallas Pro-Life Network affiliated with any of the other major organizations? Is it completely its own independent group? Are you aware of that?

Dr. TOMPKINS. We have just finished a hearing in Dallas for a temporary injunction against these people. We found out during testimony from these people that they are part of a national organization, Operation Rescue——

Mr. SCHUMER. Operation Rescue? Part of Operation Rescue?

Dr. TOMPKINS. Yes.

Mr. SCHUMER. Could you tell us a little more about your experience? Why the police have been unable to protect you and stop the things that have gone on?

Dr. TOMPKINS. There are no laws on the Texas statutes, criminal laws to help us. For instance, they sit in their cars behind our home for 2, 4, 5, 6 hours during the day, in the evening. One of my security men said one of them left at 2:30 this week. With their binoculars, they look—unless they break a traffic code or something. I thought Peeping Tom would be a help to us, but to get a Peeping Tom, they must be on your property. They are on other property.

Mr. SCHUMER. Would you consider—forgetting the legal definition, would you consider what is happening to you a common law form of extortion?

Dr. TOMPKINS. Oh, it is worse than that. It is terrorism, Mr. Chairman. I have had three death threats. One on the telephone; one the picketers in the afternoon told one of my neighbors to shoot me; then I got one in the mail, Monday a week ago tomorrow.

Mr. SCHUMER. Did you go to the police and tell them about the neighbor?

Dr. TOMPKINS. Of course.

Mr. SCHUMER. They said that is not against Texas law?

Dr. TOMPKINS. Yes, sir. I have had 85 police calls to my home since the fourth of October 1992.

Mr. SCHUMER. It is just amazing.

Dr. TOMPKINS. We are spending a vast amount of taxpayer's money.

Mr. SCHUMER. I fail to see a difference in the analogy to organized crime thugs who say we are going to bother you, and bother you until you do something we want you to do. That is a form of extortion.

Dr. TOMPKINS. That is correct.

Mr. SCHUMER. Let me ask—

Dr. TOMPKINS. Sir, I do have a poster I would like for you to see.

Mr. SCHUMER. Sure.

Dr. TOMPKINS. My wife and I and friends of ours have pulled down over a hundred of these from the sides of cars, from shopping centers, utility polls, anything you can imagine; in some places, five, six times.

They are kind of large. They are kind of explanatory. I am not an abortionist. I am an Ob-Gyn physician in private practice who is prochoice under certain conditions.

Mr. SCHUMER. You made that clear in your testimony. It is clear to all of the witnesses here that their intent is not to educate. In the case of Mr. Gunn's father, Ms. Hill, and all the others, the intent is clearly to intimidate you and force you because your life is so miserable otherwise to stop you from performing abortions. Is that clear beyond any shadow of a doubt to every one of you?

Dr. TOMPKINS. Yes, it is.

Mr. GUNN. I would like to say I have also started to receive hate mail.

Mr. SCHUMER. You have yourself?

Mr. GUNN. I actually have copies of some of it if you would like to see it.

Mr. SCHUMER. Some of this is organized, obviously? It is not just random people expressing their views. What I am trying to do here is move away from classic first amendment arguments which say we need all kinds of free speech because we want to educate people; but—go ahead, Ms. Hill. It is obviously and painfully clear there is no attempt to educate you.

Ms. HILL. No.

Mr. SCHUMER. They don't say "Let's sit down and talk about our doctrines." Is it just constant harassment and intimidation?

Ms. HILL. They are very clear to us that they will do anything to make us stop providing abortion services. They have gone way

past education years ago. The other thing I wanted to mention is we have several clinics in several States. We see the same tactics on the same day in five or six different States, the same new words used on posters. The same attack on a clinic; different tactic used.

Right after Dr. Gunn's death, we saw posters in two different cities in front of clinics, that said "One down. Three hundred to go," in three different cities on the same day. Like I said, these are not isolated incidents.

Mr. SCHUMER. Ms. Rasmussen, why were the local police unable to help you?

Ms. RASMUSSEN. I don't know.

Mr. SCHUMER. Why do you think? I am sure you have had to think about it, obviously.

Mr. RASMUSSEN. I think they have improved.

Mr. SCHUMER. I didn't hear you

Mr. RASMUSSEN. I think they have improved. I think personally they have always been very respectful to me. I think part of the problem is it is a misdemeanor and anything we might be able to attach to what they are doing to increase penalties might help. I think we all know that a misdemeanor is the runny nose of the criminal justice system and no one wants to wipe it. That is part of it. Our judges dismiss.

I don't know. I thought things like public nuisance, blocking a street, that sort of thing, would work, but that did not work.

Mr. SCHUMER. Ms. Hill, what has all of this done to your ability to operate the clinics that you do?

Ms. HILL. Well, obviously it has made it a living hell to work every day. We have staff who have families who fear for them to come to clinics. They believe in a woman's right to choose. Finding a physician in Georgia to replace Dr. Gunn has been made virtually impossible.

Mr. SCHUMER. You have been unable to find anybody?

Ms. HILL. So far we have been unable to find anybody to replace Dr. Gunn. We have had to build and make our clinics fortresses. We have security systems, armed all-night security to protect the buildings themselves. Obviously, that drives up the costs of providing the service and the opponents know that they taunt us with that.

We have had vandalism, 200 different examples of vandalism at the facilities themselves.

We are on guard all the time, 24 hours a day.

Mr. SCHUMER. Made it much more expensive at the very least. I suppose it has prevented certain women who want to exercise their right to choose from exercising it?

Ms. HILL. We see women driving 6 and 7 hours away from our facility to another facility because they fear for their safety.

Mr. SCHUMER. Finally, Dr. Tompkins, a general question: Many of the groups that take this action—and I cannot emphasize enough that these are not the mainstream of the prolife movement who I don't agree with, but I have respect for their faith and motivation. What has it done to the climate, the climate for doctors in general in the Dallas-Fort Worth area in terms of providing abortions?

Dr. TOMPKINS. Well, I am more than happy to be a member of Presbyterian Hospital in Dallas which is a hospital that accepts choice. We do provide abortions for our patients under certain restrictions to include counseling; but the doctors—I am 1 of 93 Ob-Gyns on the staff of which 85 percent of them do abortions. Under the law of the State of Texas, we can go to 24 weeks. Of course, we do not do that. We go first trimester which is 12 weeks. But the doctors are looking over their shoulders. They are scared absolutely to death about this other 18 behind me that they may be the next one.

Mr. SCHUMER. One final question to all of you: You have heard the opening statements. I think all of us are wrestling with the clash between the right to protect the desire, the necessity to protect your rights and the right to protect free speech and the ability of people to say things.

As you know, the Supreme Court even said obnoxious speech, sometimes speech that is called coercive, should be given every benefit.

Could you just give me your personal, person-in-the-street views of that. You are not giving your experience. You are not typical, but on the other hand, none of you are constitutional scholars. I don't mean that as any insult.

Dr. TOMPKINS. We don't believe these people have the right to picket and to name one person. This is my contention. I very strongly believe in the first amendment. These people have taken it just a hundred degrees too far. They have no right to go to a church; they have no right to go to my wife's place of employment.

Our home is on the market in Dallas with a very fine real estate company. Our agent received this note that said "You mustn't accept Norman and Carolyn's blood money as payment for selling their house" to a real estate woman who is trying to make a living. She is a very fine person.

There is no reason this woman should have received that. She has had the same type of phone calls we have had. She has had the same kind of mail. She has absolutely nothing to do with this.

They have now threatened to go to my wife's beauty shop. If you would explain to me what abortion had to do with my wife's beauty shop?

Mr. SCHUMER. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Dr. Tompkins, I was really very interested in the statement that you had just made that the pickets have no right to go to your church. Last Sunday when I was back in Wisconsin, I had a town hall meeting in one of my communities. Two blocks away is a Roman Catholic Church. I am not a Roman Catholic. There were proabortion picketers in front of the Roman Catholic church waving signs saying keep abortion safe and legal and opposing the Roman Catholic church's dogmatic philosophy in opposition to abortion. Do you think those people have a right to be there?

Dr. TOMPKINS. Yes, sir, I do. But I don't believe they should be at a church. I don't think they should be in front of my home either.

Mr. SENSENBRENNER. It seems to me that you have a double standard here. You said they have no right to picket you in front

of your church, but that they do have a right to be in front of the Catholic church in Wisconsin.

Dr. TOMPKINS. No, sir. Maybe I made an incorrect statement. I think they have no right to be in front of that church under any conditions.

Mr. SENSENBRENNER. Well, I disagree with you. That is what the first amendment is all about. The first amendment does not make judgments as to what is good taste and what isn't good taste. The first amendment establishes a constitutional right to express one's viewpoint. While I would never picket in front of a church to support an organization that did so, nonetheless they do have the right to picket in front of a church.

There is a whole string of court decisions that established that right and established the right for residential picketing as well, except under very narrow circumstances.

The second question I would like to ask you, Dr. Tompkins, is do you believe that physicians and nurses and other health care providers who have religious or moral objections to abortion should be able to decline to participate in abortions if that is what their conscience dictates?

Dr. TOMPKINS. Yes, I do.

Mr. SENSENBRENNER. Are you aware one of the versions of the Freedom of Choice Act takes away that right to practice one's conscience?

Dr. TOMPKINS. No, sir, I have not read that.

Mr. SENSENBRENNER. I think you ought to.

I yield back the balance of my time.

Mr. SCHUMER. Mr. Edwards.

Mr. EDWARDS. Thank you.

Since I wrote the Freedom of Choice Act, I cannot imagine any phrase in there that Mr. Sensenbrenner refers to. I am sure we will have a chat later.

Mr. SENSENBRENNER. Will the gentleman from California yield?

Mr. EDWARDS. Yes. Read me the sentence, but don't just tell me about it. Read it to me.

Mr. SENSENBRENNER. As you may recall last year when the full committee marked up the Freedom of Choice Act, I offered an amendment to the bill you introduced that protected the conscience of physicians and nurses.

Mr. EDWARDS. You are talking about something entirely different. You said in the Freedom of Choice Act there is a sentence or paragraph that says a particular thing. I asked you to tell me where it is.

Mr. SENSENBRENNER. If the gentleman will yield further, I said in one of the versions of the Freedom of Choice Act—

Mr. EDWARDS. Oh, now it is one of the versions.

Mr. SENSENBRENNER. The one you introduced last year that I had to amend to protect the consciences of physicians and nurses that were religiously, morally opposed to abortion.

Mr. EDWARDS. Well, I will not go into this further. I would like to point out to Mr. Sensenbrenner, he hasn't answered my question. He has not said what he said to you that, in the Freedom of Choice Act there is this particular provision. It is not there. Of course, it is not there.

I really have no questions. I want to extend my sympathy. I am sure that I cannot possibly feel as deeply as you do at the terrible experiences you have gone through. It is just something awful to think that American families and American individuals have to endure this especially since it is essentially a religious issue that we are talking about where a minority is attempting to force a particular religious belief on the majority and will seem to go to any end to force that.

We don't force our religious beliefs on this minority. They shouldn't try to enforce us to believe their particular religious belief as to when there is a human being and when life begins.

Thank you, Mr. Chairman.

Mr. SCHUMER. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. Chairman, the subject of the hearing, I think, is a bill aimed at offering Federal assistance to control illegal activity and not prochoice/prolife or the Freedom of Choice Act. Another day I am sure we will debate that in this committee.

Coming to what I believe is the point here, what the witnesses I am sure realize we are looking at is to what extent Federal law, if any, I guess I should add, is necessary to assist in the situations you described and how do we write it so as not to infringe upon people's right to lawfully express their views, whichever side their views may be on?

With that in mind, I would like to go back over, if I may, one aspect, and it has been talked about, so pardon the repetition. The question is a number of the activities described clearly violate State and local laws now.

There are areas where maybe admittedly that is not so clear. Maybe that should be changed. I have heard descriptions of what I would say is illegal activity, perhaps even violating Federal law. I would like to go back and ask the witnesses if they would say again what efforts they made to have law enforcement act in those areas such as vandalism, breaking windows, rocks through windows, so forth, nails on driveways that are obviously illegal or such as you experienced them.

I will start with Dr. Tompkins, if I may?

Dr. TOMPKINS. Since I think these people have overstepped what I consider the first amendment rights, I think this committee can be very instrumental in setting down punishment if the people are arrested a second and third time. We had people picketing us arrested 9 and 10 times. Nothing has happened to them.

We just got an antistalking law in Texas signed by Governor Richards. This will not be implemented until September 1. This is March. That cannot help us. We need something to put behind what these people are doing illegally to us.

Mr. SCHIFF. You are saying there may be enforcement, but you consider the enforcement not strong enough now?

Dr. TOMPKINS. Not in Texas, sir.

Mr. SCHIFF. Has law enforcement ever refused to enforce the law where there has been a clear violation of criminal law?

Dr. TOMPKINS. The police I must say in Dallas, TX, have been the nicest to these people I have ever seen in my life. There have been instances where people have attacked the prolife people and

the Dallas police have pulled them off and talked to them. Our courts are so full of things the policemen on the street do everything they can do.

We had four policemen testify in our temporary injunction in Dallas. They said we don't enforce the letter of the law. I have no trespassing signs on my driveway. They cannot come in. When the police arrive, if they find them a foot or two feet inside my driveway, they kindly ask them to move. Most of the time, they do.

Mr. SCHIFF. Ms. Hill.

Ms. HILL I have specifics I would like to give to you. In Fort Wayne, IN, during an Operation Rescue siege in the summer of 1989, the police met with Operation Rescue leaders without involving us in the meetings at all. They negotiated a waiting time. They agreed to let a few hundred blockaders sit in front of the building for x amount of minutes, I believe it came to 30 or 40, before the arrests would start. There was no concern about the closing of the business or the patients who were waiting to get in, this was negotiated beforehand.

The police in that city have been a police department that has refused to respond when we had bomb threats. They told us to look for them ourselves. They are not coming. They have not investigated any of the arson we had. We found no one. It has always been blamed on transients. We even checked it ourselves.

In Delaware we timed the response of local police when we call about a trespasser or picketer. He can take anywhere from 30 minutes to an hour for the police to respond. We had a dispute in front of our facility that was a racial dispute between a black and white man. They responded within about 2 minutes.

There is a difference in the response of the law enforcement officials to abortion related problems in every city we deal with.

One other thing I need to mention—

Mr. SCHUMER. Ms. Hill, for the record, how many States are you in?

Ms. HILL. Eight States. This is the preponderance—the preponderance of information is on that side. The Congressman from Wisconsin, in his hometown of Milwaukee, I mentioned in my testimony, there were 2,100 arrests, 20 prosecutions. The local prosecutor has been openly unwilling to prosecute for the last 10 years. We have met with him, begged him to do something about the trespassing. He has refused to.

I believe the State of Wisconsin had requested a special prosecutor in that case. I am not sure about that. That is in Milwaukee itself.

Mr. SCHIFF. Mr. Gunn.

Mr. GUNN. The police were alerted to the situation in Pensacola. They didn't act on that. I also would like to say that I didn't know the first amendment entailed harassment and intimidation. I wasn't aware that is what it protected. That is what these people are doing.

Ms. SCHIFF. Drawing that line is a difficulty. Comes to Ms. Rasmussen's testimony, rocks through windows are not in any way protected by the first amendment. I think everybody would concede that. When that happened to you, as you described, could you please relate your experience with the local law enforcement?

Ms. RASMUSSEN. I have to say I have a good relationship with them because they have been at my home so frequently; but what I do find troublesome is the fact that I think I know who did it. I wasn't asked to give any names or there wasn't any pursuit of who it could possibly have been. We have had some folks in our community for 15 years doing this sort of thing.

I would like to add something else if you would indulge me.

Mr. SCHIFF. If the chairman will indulge for a minute because the red light is on.

Mr. SCHUMER. It will be a pleasure to indulge both of you.

Ms. RASMUSSEN. I think there are restrictions on the first amendment guarantees of free speech. I know as a citizen when the President of the United States visits, I cannot get close to him. If I can, I would be arrested. I mean, there are all kinds of restrictions that are placed.

We are sitting in a situation of extreme danger. I keep saying to my local police if I were at a mall, a shopping center, or a skyway, you would know how to deal with me. That is the truth. The merchants will not put up with such nonsense. The police will protect them, and the village councils and city councils will. I don't know why I am any different or the clinic.

I think that a moment of truth in some ways has arrived. I am looking for a change. I think that we will have it, but hopefully it will be before someone else is killed.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. SCHUMER. Mr. Glickman.

Mr. GLICKMAN. Thank you.

I would just mention a couple of things. First, in the Wichita incident with which I am personally familiar, I do think that the local community, at least initially, had no concept of what they were dealing with, and I don't think the local police approached it from a political perspective. I think it was just beyond the normal kind of thing that they had ever gotten involved with before.

I also think that because of the highly charged political nature of the issue, there was a tendency to withdraw both the local units of government as well as the police; and then the Federal judge in Wichita stepped in. So I do think that without demeaning any of the motives of local police departments, because most of them can hardly cope and survive with all the violence they have to face all the time, there has been somewhat of a reluctance to see this issue as a pure violence issue.

This is a tendency to see it more as a political type of issue. It seems to be more that under normal circumstances they like to stay away from that kind of thing. Do you agree with that assessment?

Ms. HILL. Absolutely. We have seen that. There have been some political overtones in isolated communities. I did want to make one point. We spent 20 years debating the first amendment versus the rights of privacy of the patients and people performing abortions. I should mention Federal judges and State judges when given the evidence have balanced those rights. They have suffered through balancing those rights, but they have done it.

So I think in most of the cases throughout the country there has been the work to balance the rights. I think it can be done certainly by this body.

Mr. GLICKMAN. I am interested, Dr. Tompkins, when you said you were prevented from going to church one Sunday because the police couldn't guarantee your safety. Tell me again how you were picketed in your attendance at church?

Dr. TOMPKINS. We arrived at church a little after 9 o'clock in the morning. Our church is in Highland Park, which is a small independent city inside the city limits of Dallas. The Highland Park police, of course, were there. The chief of police for Highland Park came to our car. He told my wife and me, he said "I cannot guarantee your safety. There are over 60 picketers with their banners, their leaflets,"—spirit of murder in Highland Park Methodist Church, I won't go into that. He said to me "I cannot guarantee your safety. I don't know if these people are armed. I don't know what they will do."

My philosophy is that I am not going to enrage these people any more than they are already enraged. My wife and I left and went to breakfast. Then we went home and watched the church service on television.

Mr. GLICKMAN. Were these picketers complying with local ordinances in terms of how far they were from the actual church?

Dr. TOMPKINS. Yes, sir. They stayed on public property, generally; but there was one arrest made.

Mr. GLICKMAN. It is real tricky to, obviously, have the full effort of the Government preventing that kind of demonstration, as you can understand. Saying you cannot picket a church means why couldn't you picket a business or a police station or a factory. I understand—

Dr. TOMPKINS. Mr. Glickman, I would like to say one thing. On the anniversary date of *Roe v. Wade*, 35 or 40 of these people entered my hospital, the Margot Perot Presbyterian Hospital in Dallas, which is probably one of the finest medical facilities in our part of the country. We have a wonderful neonatal nursery. We deliver 350 babies a month.

About 30, 35 of these people came in for an hour and a half. We had 42 uniformed Dallas policemen in this building. On the fourth and fifth floors are patients; doctors' offices are the first, second and third floors. They were in for an hour and a half.

To show you the courtesy of the Dallas Police Department, no arrests were made. Of course, we had security at Presbyterian. They have done everything they can do. They don't call the police and say come and arrest this person. They say would you go back behind the yellow rope. This is private property. It is disturbing to anyone to go to a hospital and find 30, 35 people carrying placards, chanting, doing all kinds of terrible things. This is a private hospital.

Mr. GLICKMAN. Yes. I understand. I appreciate that.

I am also disturbed, I think it was Ms. Hill that talked about—I wasn't here but my staff tells me in your testimony you talked about your sister was dying.

Ms. HILL. Yes.

Mr. GLICKMAN. One of the dangerous parts of this is when people feel so strongly they engage in kind of a secondary boycott. If you speak at this place, we will picket you and will not patronize your place any more.

Yet that has been done before in this country's history, perhaps with a different set of motives. We had secondary boycotts during the civil rights era. But it is particularly dangerous because you could get to the point where a politician, with a particular set of beliefs, or an individual who had a particular set of beliefs who operated a business could find himself being boycotted because of a perspective on this issue. Then you have chaos in this country. That is particularly troubling.

Would you like to comment?

Ms. HILL. That has been occurring for years. Suppliers of ours have been boycotted, picketed themselves. Picketers check the UPS deliveries and check where we order things from, either threaten them, go to them, harass them. We lost hundreds of suppliers over the course of the last 10 years. Because of that, we are not even asking for relief from that. We have learned how to live with that, although it has been difficult.

I think the personal threats and what happened to Dr. Gunn are things that alarmed this community.

Mr. GLICKMAN. A final question. This may not be a fair question, but let's assume you were on the other side of this issue. Let's assume for the moment that you agreed that abortion was immoral and constituted murder and should not be protected.

OK. Put that hat on for a moment. Pretend you are a lawyer in a courtroom. You are arguing the other side. What would you be saying to us now in terms of how you would protest your government on this issue?

Ms. HILL. My response would be I would be doing the things I was doing for the last 12 years while the previous administrations were in office. I would be working politically every step of the way to see if I could change the political process and use the legislative process, and be law abiding.

I believe that is my responsibility as a citizen.

Mr. GLICKMAN. Thank you, Mr. Chairman.

Mr. SCHUMER. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman. Mr. Chairman, I want to thank all the witnesses also and express my sympathy to you, Mr. Gunn, and your family.

Particularly I know the effort that Ms. Rasmussen endured to get here at 4 o'clock this morning. The weather is not so good in Minnesota. It is refreshing to see consensus building. I have never seen, I don't think, you, Ms. Rasmussen, Sue Rockne back home, Archbishop Roach on the same side of any issue. There is a consensus building.

Even the vice president of the Minnesota Citizens Concerned for Life said of these activities, violence, intimidation, other activities we have discussed that the activities Operation Rescue has been involved in are tainting the reputation of the entire antiabortion movement; and I think any law-abiding, decent human being recognizes that these activities have no place in an ordered society that lives by the rule of law.

You mentioned you hoped that something is done. Let me say, as one member of this subcommittee, Ms. Rasmussen, to the rest of you, I am confident that with the amendment the subcommittee adopted last week, that the committee has crafted well balanced legislation that will protect first amendment rights of free speech, assembly, and expression, while also protecting the lawful constitutional rights of women and health care providers.

So I think there is hope, Ms. Rasmussen.

Thank you, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Ramstad.

[The prepared statement of Mr. Ramstad follows:]

**Statement of Rep. Jim Ramstad
House Subcommittee on Crime and Criminal Justice
April 1, 1993**

A recent headline in a Minnesota newspaper read "Operation Rescue to Invade Minnesota this Summer." Operation Rescue has made no secret of its plan to train and mobilize IMPACT teams this summer in Minneapolis-St. Paul. One of today's witnesses has already been informed by local law enforcement authorities that she will be an IMPACT team "target."

The people of our state welcome anyone to come to the Land of 10,000 Lakes -- in fact we encourage you to come and spend your money. Our economy can always use more tourist dollars. But we don't welcome violence or physical intimidation or interference with a woman's constitutional rights.

Your prayer vigils are welcome; your peaceful picketing and expression of other First Amendment rights are welcome; but any kind of violence, destruction of property or interference with the constitutional rights of others will simply not be tolerated.

As long as the Constitutional right to an abortion exists, access to medical facilities will remain a component of that right, and it will be protected in Minnesota. The legislation before this subcommittee is responsive to increasingly frequent attempts to shut down women's health clinics by physical obstruction and trample on the lawful rights of women.

I might add that not all Minnesotans have the welcome mat out for Operation Rescue. Our highly respected Roman Catholic Archbishop John Roach said last week that he opposes Operation Rescue's plans to target Minnesota. The Archbishop was also quoted as saying that he " . . . doesn't consider Operation Rescue to be a positive element in the pro-life movement." He cited the experiences of Los Angeles, Buffalo and Milwaukee and noted that whenever Operation Rescue has been involved, "violence has tended to become part of the issue."

The Archbishop's comments are not surprising in light of the inflammatory rhetoric we've seen from the founder of Operation Rescue who said recently that he has "vowed to make doctors' lives a living hell."

We don't treat people like that in Minnesota -- not even politicians! The harassment techniques and violence aimed at doctors, their families and reproductive health centers -- humiliating doctors' children at school; calling a doctor's parents to falsely tell of the doctor's death; clinic bombings and other arsons; the vandalism and death threats; the stalking and burglaries -- such acts will not be well received in Minnesota where we respect the dignity of our fellow men and women and live by the Rule of Law.

Operation Rescue, welcome to Minnesota. But keep it peaceful and respectful of the rights of others. Anything less will not be tolerated.

Mr. SCHUMER. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

This is not a question about thanking you for being witnesses. You are American heroes of this end of the 20th century. You are risking your life. You are going public. You were harassed enough. Now everybody in the world knows who you are.

I understand the thoughts that had to go through your minds when you decided to accept the invitation of the committee to come here. Dr. Tompkins, you are asking for more. That is the way narrow-viewed people will be viewing this attempt to have a discussion under the free speech provisions of our Constitution.

But that is where we find ourselves. You have made that decision and I applaud it.

Now you are in.

The White House is a few—less than a mile away. The Department of Justice is very close by. You leave this hearing. Young man identifies himself as the Chief of Staff to the President of the United States and invites all four of you to please join him and the Attorney General for a few minutes, if you would. Would you accept? Yes, of course.

Then you are ushered into the White House and they close the doors and they say look, we know that this is a difficult problem; a lot of people are trying to pretend it is insoluble and it is highly complex and it is this, and it is that.

Can you tell us, Dr. Tompkins, Ms. Hill, Mr. Gunn, and Ms. Rasmussen, how would you urge us at the Federal level to go about quietly and constructively in a true American way, trying to resolve this problem? What would your response be?

Dr. TOMPKINS. As I said previously, you have stronger penalties for people who break the laws by trespassing, stalking in general. I don't think this issue is going to be solved any time soon; but we need any help this committee could give us to allow a woman to have a right to choose. It is just as simple as that.

Ms. HILL. I think we would say we have been crying for help for the last 12 years; that we are glad there is someone who will listen to us. I think my concern would be to really get to the bottom of this, of the network that we believe there is and no one else has believed.

I think the questions have never been asked really officially: Who is paying for this? Where is the funding coming from? How are people being sent interstate to harass us and do the things they have done. Those questions have been asked by us for years, but there has been a deaf ear in Washington.

Mr. GUNN. I would like for the harassment to stop, the hate mail to stop, the encouragement of hate that these groups give to their members. They encourage this type of action. It shouldn't be like that. I just wish people would listen to what we are saying. This actually happened. This is a real problem. Nothing has been done about it until now.

Mr. CONYER. What would you tell the President and the Attorney General that you want them to do? They would agree with you. They would sincerely share their commiseration; but they would be saying, Mr. Gunn, your dad paid the ultimate price here. We want to listen to you about what we ought to do to make up for that.

Mr. GUNN. What I would like for them to do is investigate who is actually at the bottom of all of this. Any person with a small amount of intelligence can read the papers and see there is something much more grandiose than one lone killer acting alone. That is a fallacy. There was a conspiracy. It needs to be investigated as that.

Mr. CONYERS. Thank you.

Mr. RASMUSSEN. First, I would like to say I think the issue of abortion was decided a long time ago. It doesn't make any difference what anyone thinks about it. Women are going to determine their own destiny, period.

I do think out of all of this there has been something quite wonderful that has happened, if I can express that about tragedy. That is that people who sincerely disagree have been the ones that have called me and have been shocked and sickened and willing to help out. And I think that is the first encouraging sign I have seen in a long, long time.

But I do think the Federal Government has to revisit the civil rights laws. I think that women have to be part of them and certainly physicians and health care providers. I think if it were the VA hospital perhaps you would understand how to deal with it. I have a military installation very close to my home.

I would hope that the sunshine warriors would be at my home protecting me. I have a right to go home and sleep without fear. I think we have things that could be used to address this problem that have not been used.

Mr. CONYERS. May I thank all of you for your very articulate and thoughtful answers.

Thank you, Mr. Chairman.

Mr. SCHUMER. Mr. Mann.

Mr. MANN. I have no questions, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Mann.

Again, I want to thank the panel. One final point I think that ought to be made, that is we are dealing with this admittedly difficult issue. Isolated incidents are a lot different than a pattern of behavior designed to intimidate or threaten. That is the direction we are going to have to be looking in.

It is clear to me the behavior exhibited against all four of you is designed to threaten. It still doesn't make crafting the legislation any easier because you have to separate what is a threat from what is just anyone's right to free speech. But it means there is an imperative upon us to try to make that separation. To do nothing is not satisfactory.

Dr. TOMPKINS. Mr. Chairman, we thank you for having us here.

Mr. SCHUMER. Thank you. I thank each and every one of you for your work.

Ms. RASMUSSEN. Thank you.

Mr. SCHUMER. We will now call our second panel. Dr. Tompkins, by the way, is accompanied by bodyguards which he has to have all the time. That is not because of an exercise of free speech.

Our second panel consists of four nationally known leaders in the antiabortion movement. First is Randall Terry, founder of the Operation Rescue organization. Mr. Terry has led numerous protests against abortion in many American cities and his views are widely

expressed in the media as well as books and films he has authored on the subject, in addition to his nationally syndicated radio show.

Our second panelist is Jeff White, State director for Operation Rescue of California. He is also the founder of the No Place To Hide campaign which he will discuss today. He has participated in numerous antiabortion protests across the Nation and worked with law enforcement agencies which have to deal with these activities.

Our third panelist is Rev. Joseph Foreman, the leader of the antiabortion group Missionaries to the Preborn based in Milwaukee. Mr. Foreman led and participated in many protests around the country and is well known for his media appearances to discuss the abortion issue.

Finally, Katherine A. Hudson is the director of the American Woman's Association for Rights and Education, also known as AWARE. The group is based in the Washington, DC, area.

I wanted to thank each of you for being here this morning. Your prepared statements will be read into the record.

We are going to limit each of you as we did the last panel to 5 minutes. Please try to get your points across in that length of time. We will begin with Mr. Terry, then Mr. White, then Reverend Foreman, and finally Ms. Hudson.

STATEMENT OF RANDALL A. TERRY, FOUNDER, OPERATION RESCUE

Mr. TERRY. Mr. Chairman, members of the House of Representatives, thank you for the opportunity to be with you. I think what we are seeing here is a low-tech lynching.

I am distressed by the mischaracterizations, the outright lies, the character assassination that has gone on of decent men and women all over this country who have conscientiously and nonviolently sought to save children from abortion. It is our hope that during the time of questioning we can set the record straight and not only diffuse any further amendments to the freedom of access to clinic entrances but also to kill the bill, frankly.

I founded Operation Rescue in 1978 with the express purpose of calling the church of Jesus Christ and the Nation to repentance over the national sin of child killing. Part of that repentance is for people to nonviolently place their body between the killer and his intended victim.

I would insert at this point—we have a pledge our participants are required to sign that they commit to nonviolence in word and in deed. Since the beginning of Operation Rescue, over 60,000 arrests have been made nationwide perhaps making Operation Rescue the largest civil disobedience movement in the history of America. To say we are somehow not mainstream is to defy American history and the numbers.

What is the profile of the average person who is at one of these events? There are grandmothers praying the rosary; moms with small children of their own; there are businessmen, owners of businesses in the community; doctors, lawyers, firemen; yes, there are even policemen who have been arrested with us in our efforts to save children.

To in any way call this diverse cross-section of Americans terrorists is to insult intelligence, is to insult the true victims of terrorism all over the world, and is to betray the meaning of the word.

It is important to note the average charge of the rescuers: Trespass, disorderly conduct, failure to disburse, and we are arrested, arrested regularly as the record will clearly reflect.

I think what I would like to point out here is that rather than us being terrorists, the truth be known, we have been singled out as an organization, really as a movement, to be hammered by law enforcement officials and judges.

Compare the sentences that prolife citizens have received at the hands of judges or the treatment we have received at the hands of police with other protest civil disobedience groups. I want to say something here. Please hear this. We understand the difference between protected first amendment speech and civil disobedience.

The activities of blockading abortion clinics are not first amendment speech. We understand that. However America has a rich heritage from Susan B. Anthony to Rosa Parks, from Dr. King to the heavy coffin of the underground railroad. We have a rich heritage of civil disobedience and tolerance of civil disobedience.

It is a form of political protest.

We patterned much of our activity, much of our training, and much of our literature after the writings of Dr. King and the civil rights leaders.

Now, if you compare the sentences we have been given to those given by other groups, for example, homosexuals going into St. Patrick's Cathedral desecrating the Eucharist, cursing, blasphemy. They were given a hundred dollar fine and released.

We have been fined hundreds of thousands of dollars in New York City. I personally spent 7 months behind bars while people who committed violations, people convicted of drug abuse were freed. In L.A., when Martin Sheen, the actor, was arrested for his 18th civil disobedience protest, he was given a small fine and community service.

Contrast that with the proliferators who on their first arrest were given weeks and months in jail for their first offense. Operation Rescue is civil disobedience. We acknowledge it is an effort to save children.

However for our opponents to say it is not civil disobedience in the traditional sense of the word is a very hollow argument, to say Operation Rescue is not politically correct civil disobedience.

We believe this legislation strikes at the heart of what it means to live in political freedom. That is the right to dissent. Sometimes vigorously. Sometimes with nonviolent civil disobedience without the fear of oppressive crushing retaliation from a government.

Compare the treatment we have received with every other protest group, whether animal rights activists, homosexual activists, people protesting on behalf of trees, people protesting on behalf of the homeless. We have been singled out and hammered.

I want to ask a question of the members of this board: Will the homosexuals who continue to sit in at our churches be targeted with a Federal offense? Will the AIDS activists who blockade Federal buildings sitting in, will they be charged with a Federal offense? Will the activists for the homeless or animal rights, the peo-

ple who blockade research laboratories because they don't want animals used in research, will they be charged with a Federal offense? Or is this selective prosecution and persecution because we have dared to confront the crown jewel of the politically correct? Child killing.

Thank you for the opportunity of being with you. It is my hope that death industries' frenzied attempts to keep child killing legal at all costs will not blind this body and the larger committee to what is really happening here. That is that abortion kills children. We are being singled out because we are trying to save them.

Finally, we are not the new kids on the block, Mr. Chairman. Abortion was illegal for a hundred years before *Roe* and would never have been tolerated by the Founding Fathers of this country in its current stature. Beyond that, God has plainly said through the law of Moses thou shalt not murder.

We will give an account as a nation for the blood that is now crying from the ground for vengeance.

Thank you.

Mr. SCHUMER. Mr. White.

STATEMENT OF JEFF WHITE, DIRECTOR, OPERATION RESCUE FOR CALIFORNIA

Mr. WHITE. Thank you, Mr. Chairman.

I have here a video I requested for days that I have the opportunity to show. I saw a video machine being wheeled in and then wheeled out.

Mr. SCHUMER. It is right outside. If you want to use your 5 minutes to show 5 minutes of that video instead of deferring to the questions we have, that is your right.

Mr. WHITE. I would love to.

Mr. SCHUMER. Fine. Bring in the machine.

Mr. WHITE. Mr. Chairman.

Mr. SCHUMER. Yes.

Mr. WHITE. May I give a 10-second introduction to what this is I am showing?

Mr. SCHUMER. Sure. Where is the machine? While we are setting up the machine, why don't we have Reverend Foreman give his testimony.

Your entire statement is read into the record.

STATEMENT OF REV. JOSEPH FOREMAN, PRESIDENT, MISSIONARIES TO THE PREBORN

Reverend FOREMAN. I wanted to thank you very much for this opportunity to testify.

The history of the abortion lobby has been to use every possible tactic to crush all dissent, thereby making abortion the only choice by default. One of the major tactics has been to label all street activity as violent and extremist. I mean all street activity.

Because the prolife movement has been distinctly lacking in violence and extremism among its demonstrators, the abortion movement feels compelled to create the violence themselves. They focus the media on one or two picketers who might shout in order to tar all prolife people. Under the guise of stopping people who block doors, they seek injunctions that, in fact, freeze the first amend-

ment rights of picketers by establishing bubble zones where the first amendment is suspended.

These injunctions have nothing to do with blocking doors but everything to do with violating first amendment rights of picketers.

Now we see them using the fact that a man was shot, a tragedy, in order to target people who neither shoot nor advocate the shooting of an abortionist. What is wrong? Are the murder laws not strict enough, or arson laws too lax, or assault and battery laws incapable of enforcement? If there were actually "an acceleration of violence at abortion clinics" which is almost a universal claim of the media, why are jails filling up with people guilty of sit-ins instead of assault and batteries? I will tell you why. It is because in terms of the actual street activity, there is almost no increase in assault and battery.

Let me give you an example. In Milwaukee, we have 49 documented incidents—in other words videotaped footage of police bringing assault and battery charges only to be forced to drop them when the videotaped footage clearly demonstrated either there was no assault at all or that it was the proabortion person who did the assaulting.

By the way, they never bring reverse charges even when the videotape demonstrates it. The police have been documented as lying 49 times. They are not called to account by the courts. This is typical of all the escalating violence type of lies. I am talking now about street activity.

Like everything else they do, the legislation is designed to eliminate the moderate element of the prolife movement. If successful, you are going to have a disaster on your hands.

Let me paint you the picture of why I say that. There is an ethical crisis that exists at the doors of every abortion clinic in the country. There is a man committed to killing a number of children each day. How can we both stop him and yet still respect his right to life?

The only solution that a secular world can offer is a false solution which comes straight out of the row-boat games of their own values. In those games the ship is sunk, there is not enough food, the class must decide who must die. Do you kill the children? Do you kill the doctor?

Instead we have rejected this as a false dilemma and say no, there is another solution. You separate the doctor from his victim in a passive way. Rescue blocking the doors of the abortion clinic supplies the only solution in which everyone walks away from the death camp alive.

The abortionist lobby, they don't want everyone alive. Their agenda was crumbling in the face of their harmless protection of everyone. They desperately needed a dead abortionist to give their distortionists credibility. When they finally got their kill, their plan worked. They have successfully intimidated the Congress of the United States into attacking people who have no earthly connection with this killing. You must not allow the distorted agenda of the abortion lobby to make you act as if nonviolently separating a killer from the victim is the same as using force to either destroy his building or him.

Mr. Terry made the distinction between first amendment activity and a blockade. I agree with that distinction. I am going to go on to make the distinction between a blockade and the use of violence or other sorts of activities. We have consistently been against anything that is violent. We have consistently spoken against it.

One of the reasons why in Milwaukee we no longer have people sign a statement of pledge of nonviolence is for the simple fact that that is used as conspiracy when we go to court. And so conspiracy charges can be brought against us because we are charging non-violence.

Don't be confused about what is at stake here. Hundreds of thousands of middle Americans have come into the street to directly confront evil and offer their own homes to any mother in need. It is possible to crush them by singling them out because of their political incorrectness with unconstitutional remedies like this proposed legislation.

What is the result going to be? You are going to remove the middle of the road element committed to nonviolence. Please think. See through the media's feeding frenzy. If you refuse to distinguish violent from nonviolent, if you go on to crush the nonviolent claiming to go after the violent, I am against the rock throwers. They shouldn't be doing that.

Then you inevitably leave the arena to the true extremists. Believe me, I know the extremist mindset. I have not spent the last 5 years polishing a media image. I don't care what you think of me or the so-called prolife movement. I have spent almost a year and a half of that time in jail. I am telling you what I have seen and heard out there. The extremist is not a demonstrator.

We hear Michael Griffin described as a protester. He has never protested or demonstrated against anything in his whole life.

I am simply telling you that to them, rescuing and going to jail is foolish. Their reason is the doctor comes back the next day. With all due respect to my fellow people on the panel, they view us as halfhearted. Their type was careful how we handle things like the killing of Dr. Gunn. They watch to see whether or not people like Jeff White, Randall Terry or me have folded in our defense of the children.

While the media savage us for aggressively speaking up for the children who would have been killed, the Michael Griffins out there see our stand for the children and they are clearly deterred.

Why? Because they see us as taking a stand and therefore they don't take matters into their own hands. They see the moderate element may be bloodied but we are unbowed.

Now our actions tell them we are not crushed. All our means have not been exhausted. You pray the extremist. An antiabortionist does not come to the conclusion that Operation Rescue or the Missionaries of the Preborn have failed. I know you don't like these words. You know they are true. Like the media, you find it convenient to twist them as if I were threatening something. You know I am not. You know the mind set of the extremists and what triggers it. You know in this legislation you are holding the trigger to their violence. Don't pull it.

Remember the one question that the true extremists ask: Is it possible to use nonviolent political means effectively or have those committed to those means been crushed? Don't crush them.

Mr. SCHUMER. Why don't we go to Mr. White's tape.

Mr. WHITE. Thank you for allowing this. I appreciate it. Basically what I want to show the panel here is what you hear about us just isn't true. Rescue is peaceful and nobody violent. You will see the footage in the early years when we didn't have all the proabortion forces coming against us. You will later see these events, some of them in L.A., in my hometown there, you will see them develop, and you will see where the violence is at.

Mr. TERRY. Could you please turn that—it is about 4½ minutes. Could you please push it so Mr. Glickman can see it.

Mr. GLICKMAN. I will move.

Mr. SENSENBRENNER. Turn out the lights.

Mr. TERRY. This is a realistic and graphic portrayal of what goes on.

Mr. SENSENBRENNER. The lights in the back are glaring against the screen. The ones up there.

Mr. SCHUMER. Do you know how to shut those off?

For the record, we originally said we were not going to do any tapes at all. Ms. Hill requested a tape as well.

[A tape was played.]

Mr. WHITE. Thank you, Mr. Schumer.

[The prepared statement of Mr. White follows:]

Hearing before the subcommittee on Crime and Criminal Justice

Date: April 1, 1993

Testimony of Jeffrey Lee White

My name is Jeffrey Lee White. I am the state director for Operation Rescue of California. I am also the founder of the No Place To Hide campaign. I am involved in all phases of the prolife movement. From civil dissent to legislative activism to mercy ministries.

Because of the expertise of others who will be addressing this subcommittee I will limit my remarks to the No Place To Hide campaign (NPTH).

NPTH campaign and activities like it have been the target of much discussion. Most of it has come from those who don't agree with anything the prolife movement does.

The response has been "This is terrible, we must put a stop to this". They accuse us of everything from harassment to stalking, from invasion of privacy to disrupting neighborhoods.

Their suggested resolution: make "IT" illegal.

But before we make a law, let's look at "IT".

No Place To Hide is based squarely on the First Amendment. It relies on the premise that lies cannot stand the light of truth, that truth will prevail. So the goal of No Place To Hide can best be understood in light of the scripture verse from Ephesians 5:11. "Have nothing to do with the fruitless deeds of darkness but rather expose them".

We "expose" the abortionist by picketing his neighborhood, distributing neighborhood alert flyers, picketing his office, writing letters asking him to stop, and as our next campaign suggests, sit down and meet with him. Recently, two Doctors returned to the healing profession after meeting with participants of NPTH.

Our participants are given clear guidelines to follow and I've included them for your perusal. They stress what Operation Rescue has always stressed: peaceful, nonviolent protest.

Our detractors are screaming all sorts of accusations, but I hope this subcommittee has the wisdom to see we are clearly talking about First Amendment issues. Harassment, stalking, invasion of privacy, assault and murder are already illegal. To raise these complaints is nothing more than a smokescreen to hide behind while they try to strip us of our God given rights. Rights that our forefathers fought and died for. Rights you are given the awesome responsibility to preserve and protect.

The truth is they don't like "what" we say, not "how" we say it. The First Amendment is there to protect the free speech of those we disagree with, for they are the ones in danger of being unjustly silenced.

Those who seek passage of FOIA want uninhibited access to abortion. They view the information proliferators share as interference or worse - intimidation. But don't women have the right to know? And if we cannot tell them who will? Must they make their choice in ignorance in order to fully exercise their right.

The public sidewalk has long been recognized as the rightful domain of free speech. If a person cannot express himself in an orderly fashion on the public sidewalk where can he make his dissent known? Truly this is censorship of the most heinous kind.

The right of freedom of speech and press includes not only the right to utter or to print, but the right to receive, the right to read and the freedom of inquiry.

Some will say, "But neighborhoods should be out of bounds." To which I ask, "Why suddenly after 200 years should public sidewalks, in residential neighborhoods, be off limits?"

And it begs the question, "off limits to who?" Prolifers? Union leaders? Black civil rights leaders? Is our view so dangerous that one should trample our rights and thereby the rights of all? What ever happened to the old adage: "I may not agree with what you have to say but I'll defend your right to say it?"

We need you to look past all the hysteria and remember first principles we all hold dear. If you silence us today, who will be silenced next and at what cost.

You are Statesmen: rise to the occasion and stand for freedom, model tolerance, protect liberty. For if you do what is only politically expedient, who will stop the assault on our constitutional rights? May God grant you the courage, and I implore you for the sake of our children, to do what is right.

In closing I share with you a quote from Abraham Lincoln in which I have only replaced the word slavery with abortion. And I Quote: "The question recurs, what will satisfy them? What will convince them? This, and this only: cease to call *abortion* wrong, and join them in calling it right. And this must be done thoroughly - done in acts as well as in words. Silence will not be tolerated - we must place ourselves avowedly with them. Holding as they do, that *abortion* is morally right, and socially elevating, they cannot cease to demand a full national recognition of it, as a legal right, and a social blessing."

"All they ask we could readily grant, if we thought *abortion* right. All we ask they could readily grant, if they thought it was wrong." End quote.

There were many unwise laws passed in reaction to those who thought slavery evil. please let's not repeat the same mistakes. Let's protect everyone's freedom of speech, freedom of association, and the right to exercise their religious freedom.

Let's stop censorship in it's tracks, let's defend our right to disagree, to say what we believe to be true, in a public forum, even if it is not popular with those in power.

Finally, I return to the scripture in Proverbs that calls on us all to: "Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy."

Thank you for the opportunity to address you.

OPERATION RESCUE OF CALIFORNIA

9852 W. Katella Ave., #263
 Anaheim, CA 92804
 (714) 781-8117

"Rescue those unjustly
 sentenced to death..." Prov. 24:11

Exhibit 1

Dear Pro-Life Friend,

Thank you for requesting information on our "No Place To Hide" campaign.

The "No Place To Hide" campaign is designed to expose abortionists at their offices, homes and private clubs. We want to end their Jekyll and Hyde existence as child-killers at work and respectable members of their community the rest of the time. We want to expose their evil deeds, not to needlessly shame them, but to motivate them to stop practicing their grisly trade.

We continue hearing many success stories. Several abortionists have quit committing abortions. Several clients of the "doctors" have been shocked to learn that their doctor kills children. These women have since changed to pro-life doctors.

Enclosed are flyers, articles, press releases, and many ideas about how to expose the abortionists in your city.

Also enclosed is a list of steps to take to successfully carry out your first "No Place to Hide" campaign.

I hope you're able to start a "No Place To Hide" campaign in your area soon.

Hundreds of babies can be saved -- and perhaps the abortionists will have a change of heart!

Please let us know of any praise reports of the "No Place to Hide" campaign in your area, and send pictures we can put in our newsletter. Thank you!

God bless you,

Jeff White
 Jeff White

EXN

HOW TO RUN A "NO PLACE TO HIDE" CAMPAIGN

1. Identify OB-GYN/"doctors" who are committing abortions in your community. Check ads in the yellow pages and contact your local pro-life groups to help you.
2. Confirm on the telephone that they're still doing abortions.
3. Call or write to inform the abortionists of the campaign, to give them an opportunity to stop performing abortions. Try to reason with the doctors, speaking from your heart about the unborn child, and the pain and anguish their mothers go through. If they agree to stop killing children, ask them to put in writing that they will no longer be doing abortions. Once a doctor gives you his word, either verbally or in writing, let him know that you'll be checking up on him in the future.
4. After identifying the abortionists in your local community, prepare a letter inviting local pro-lifers and pastors to come to your "No Place to Hide" campaign. Try to pick one day a week (Saturdays are good for those who work) and expose the same abortionist for one to two months. A good time to picket the abortionist is 11:30 am - 1:30 pm.
5. Call your local radio, TV and newspaper assignment desks the morning of your first day in front of the abortionist's office, to announce your "No Place To Hide" campaign. Fax them a press release as well.
6. Continue to call and fax announcements to the media each week if possible. Any media coverage about abortion helps keep the horror of abortion in the minds of the people in your community.
7. Create a "Neighborhood Alert" flyer to hand out to people entering the building and nearby offices.
8. Take pictures and write articles about your campaign for local and national pro-life publications.
9. Write letters to the editor about the campaign.
10. Bring posters with pictures of aborted babies and posters naming the doctors who perform abortions.
11. Instruct the picketers to ignore the pro-aborts who may show up, and to be peaceful at all times. Ask them to keep in an attitude of prayer - for the victims of abortion as well as for the abortionist.

"Have nothing to do with the fruitless deeds of darkness, but rather expose them." (Ephesians 5:11)

Exhibit

"NO PLACE TO HIDE" GUIDELINES

1. Remain peaceful, non-violent, and loving at all times. Abortion will end when hearts are changed, not from fear.
2. Before picketing an abortionist, positively confirm that he/she is definitely doing abortions.
3. Encourage the abortionist to quit killing children by sharing your heart about the unborn children, about the women exploited by abortion, about the condition of his soul, and the negative impact abortion has on our nation.
4. Do not threaten the doctor in word or deed.
5. Consider the abortionist as a person who themselves are in great need of your help to get out of the horrendous business of killing children for money.
6. Pray for the abortionists and their staff.
7. Remain peaceful when approached by pro-abortion activists. To help keep demonstrations peaceful, do not engage in arguments during a picket.

Mr. SCHUMER. Our final witness on this panel is Mr. Hudson.

STATEMENT OF KATHERINE A. HUDSON, DIRECTOR, AMERICAN WOMEN'S ASSOCIATION FOR RIGHTS AND EDUCATION [AWARE]

Ms. HUDSON. Thank you, Mr. Chairman. I am not a prolife activist as you mentioned earlier. I was a prochoice clinic defense activist for many years in this city. I also traveled to other cities to assist in keeping clinics open. My reason for being here today is to say there is violence on both sides. The potential is there. Prochoice activists collect information on proliferers just as we mentioned the proliferers collect on doctors and clinic administrators.

I myself had home addresses, phone numbers, businesses, names of children, spouses, even Social Security numbers. We did spy on people. I followed somebody for several days in the car to threaten and intimidate her from when she blockaded a doctor's office.

I think the clinics in the Washington area are an ethical and responsible group. However there are other people like you saw in the video whom I have been at clinic attacks with. I have seen them spit, kick, and hit people who had done nothing to them. I have seen them refuse to cooperate with the police in any way.

The police, in fact, are far more concerned about the activists of Act-Up, Queen Nation, National Women's Rights Organizing Coalition than they are with Operation Rescue.

One of the reasons I stopped being a clinic activist was because of the violence that was going on at rescues around the country, outside of the District. However in the District itself, things are different and things have changed over the years. The police do take it more seriously now. They do arrest faster. People are charged with trespass and they do pay fines and some people have done jail time in our local areas for blockading access.

I don't think that Federal legislation outlawing only prolife violence as you call it is proper. It should be all violence, all people. The prochoice people who spy upon and intend to do personal harm and harassment to the proliferers should be just as liable for their actions.

Thank you.

Mr. SCHUMER. Thank you, Ms. Hudson

[The prepared statement of Ms. Hudson follows:]

Testimony of Katherine A. Hudson
Before the House Judiciary Committee's Subcommittee on
Crime and Criminal Justice
April 1, 1993

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to express my thoughts on violence within abortion-related activism in America.

For three years I was a pro-choice clinic defense activist with the Washington Area Clinic Defense Task Force (WACDTF) in metropolitan Washington, DC. In addition to my activities with the local group, I travelled out of state to assist in "keeping the clinics open". I kept files on the individuals and organizations participating in rescue activities. These files included when and where they were arrested for blocking access to abortion facilities and any personal information that could be secured about them. This information was shared with national groups such as NARAL and NOW and local pro-choice groups. I have filed affidavits with federal authorities on the violations of leadership of OR and have also testified in federal court against the organization. I have attended approximately 45 clinic blockades, numerous rallies, pickets of doctor's offices and other related activities.

My expertise while a pro-choice activist was in gathering information on the activities, movements and personalities of the leadership of Operation Rescue (OR) and other pro-life activist groups. To this end, most of my time in front of clinics was spent on the pro-life side of the street, following leaders, observing and documenting violations of local laws and/or state and federal civil injunctions. While standing on the pro-life side of the street at clinic

activities, I have never felt threatened or in danger. While one or two exceptions, the Christians, whether leaders or rank-in-file, have been overwhelmingly friendly towards me. During one rescue, I found myself on a Metro platform with 100 or more pro-lifers who were travelling from one clinic to another. I was following, or in clinic defense terms "shadowing", Randall Terry. I was clearly identified as a pro-choice person by insignia and radio equipment yet no one attempted to hurt me in any way although there was no other pro-choice person in sight and clearly a situation during which personal violence, if a matter-of-fact situation or routinely practiced, would have been ideal.

In three years of local activism, I know of only one incident of what would be termed "personal harassment" of a doctor in the DC area. In February 1992, a moving picket took place over several hours at a Montgomery County, MD physicians home. It is my knowledge and understanding that the picket was not organized by the leaders of Project Rescue, the local rescue organization, but by a woman, while associated with rescue activities, is not a leader or organizer. The doctor and his family left their home shortly after the picketers arrived and proceeded with their plans for the day. When I later queried the clinic administrator (who is also the doctor's wife) about why she did not call WACDTF for assistance, she didn't express great concern about the picketers. The doctor and his wife did not wish to have any pro-active involvement on the part of pro-choice activists and expressed that their neighbors supported what the doctor did for a living. It additionally came to my attention that another local physician who performs abortions and owns several area clinics, told the doctor and his family who were picketed that it was best to do absolutely nothing. That involving the pro-choice forces would probably escalate the attention upon the doctor. All other clinics were notified of the picket and

informed that WACDTP would be more than willing to discuss and suggest ways to avoid harassment. Most expressed very little concern that it would happen at their homes.

I must admit to behavior that could perhaps be perceived as less than non-confrontational as the picketers left the doctor's home. Another pro-choice activist and I followed the woman who appeared to be leading the group in our car. The driver stopped once, got out of her car and told us that she was going to the police. We continued to follow her to the Bethesda, MD police station. Both the driver and the woman were clearly unnerved by our actions.

Personal harassment possibilities are present on both sides of this issue. Pro-choice activists compile lists of the pro-life activists' home and business addresses, phone numbers, names of spouses and children, churches they attend, vehicles owned or used by pro-life rescuers, even social security and drivers license numbers - whatever personal information is available. Trash has been collected for years from offices of organizations and homes of rescue leaders. Only because of the integrity of the majority of the Washington Area Clinic Defense Task Force has this information been kept from being used by more radical members. Suggestions to picket the homes and business of pro-lifers, to mail postcards condemning their activities to neighbors and in general harass them with the mistaken intent of embarrassing them into quitting rescue activities, have been prohibited by the task force. WACDTP is the most ethical and non-violent clinic defense organization in the country. Pro-life activists here and in other cities, have stated many times that "things are different in DC". There is an unusual atmosphere of respect for "the other side" even if opinions and behavior are not approved. In this area, I know clinic administrators and doctors who have cordial relationships with pro-life activists. I have, however, no doubt that if other less ethical organizations or individuals secured information such

as this, that nothing would prevent them from waging a personal campaign of harassment against pro-lifers.

I have personally witnessed two incidents of individual violence at clinic blockades committed by pro-lifers in Metro DC. In March 1990, in Pasadena, Maryland, a pro-choice clinic defender was thrown to the ground by a man attempting to block access to the clinic. And, indeed he was not arrested for the assault nor prosecuted, despite assurances of the Anne Arundel police that he would receive an assault charge in addition to a trespass charge. It is my understanding that this particular individual had a history of inflicting violence on at least one woman (his wife). The second incident was in April 1992, when a female pro-life sidewalk counselor launched herself into a group of pro-choice escorts surrounding a patient at the Hillcrest Clinic in SE. I do not recall if she was charged with assault, but I know that she was arrested immediately. In addition to these two incidents, I am aware of three other such incidents during clinic blockades and one at a rally site. At the first blockades of DC clinics in November 1989, a pro-life man pushed past a line of clinic defenders and a plate glass window was shattered. I do not know if anyone was injured or if an arrest was made. During an OR rally in Crystal City in November of 1990, a pro-choice woman who was taking down license plate numbers of pro-lifers attending the rally, was assaulted by an unknown [suspected pro-lifer] man. She was bruised and her camera was damaged. The individual was never caught. In January 1992, one man committed two acts of violence on succeeding days at two different clinics. He was identified as a pro-lifer, but appeared at the first clinic on Friday on his bike after the rescue activities were in progress. He was not wearing the identifying armband that OR had given to everyone present at their mobilization site that morning and subsequent discussions with the local rescue leader and other individuals in Project Rescue has led to me believe that he is not known

to them. On Friday, he drove his bike into a group of clinic defenders standing in front of the Washington Surgi Center. Then on Saturday, he jumped into the middle of a group of escorts taking a woman into Capitol Women's Center. Over the objections of everyone involved, he was not charged with assault nor prosecuted.

These incidents however, are minuscule when compared to the number of clinic blockades in the regional area (DC, MD, No. Va and So. VA) during this period of time. There have been 10 days of national rescues and probably another 10 days worth of local/regional rescues since November 1989. All told, thousands of people on both sides of the issue have been in the streets in front of clinics. Everyone is tense and stressed. It is very early in the morning, no one has had enough sleep, it is either too cold or too hot. And, of course, the issue itself is incredibly emotional. Yes, there are arguments and yes, there is leaning and shoving — but it is on both sides not solely the Christian side. There are an equal number of calm discussions, coffee shared and even friendships made. When, in 1991, it appeared that a pro-life woman was knocked down in the alley behind a clinic by the police, everyone was upset, not just her fellow pro-lifers. I was questioned last year by a woman gathering information for a student paper about the kicking, hitting and all-around violence outside of the clinics. My response, which was concurred with by other WACDTFers, was that if that was the case, we did not see it here. A difficult day for all, perhaps, but definitely a safe activity to be involved with.

A close friend of mine who has frequently travelled with me to clinic blockades is not only a long-time, very visible activist, but is a clinic employee. She, however, has developed many personal relationships in the pro-life community and has even invited people who routinely blockade clinics in her state to her home. Many other pro-life activists have her home address

and phone number. She not only does not feel threatened, but has said that they are good, decent people.

In clinic activities outside of DC, I saw a very hateful "face of pro-choice America" during my last months as clinic activist. Extreme unpleasantness only escalates the level of tension and, in my opinion, made the pro-choice people look truly ugly and out of control. I know from talking to people who support abortion, but are not involved in clinic defense, that they have concerns about the behavior of pro-choice defenders as well as the pro-life blockaders. My former employer, an attorney, was concerned everytime I attended a blockade that I would be arrested.

In Buffalo, I saw members of the National Women's Rights Organizing Coalition (NWROC) spit in the faces of praying ministers, scream obscenities and kick a pro-life woman who had fallen on the ground. An Refuse & Resist [R&R] member assaulted the OR media spokesperson, ripping his coat. Later that week, the same [pro-life] person was chased down a hill where he fell and injured his arm. I was a close witness to the same group of NWROC activists refusing to cooperate with police in both Buffalo and Houston. In Houston, an NWROC individual hit a pro-life woman with a sign while a rescue was in progress. The Houston police were able to arrest him the following day -- on the day of the assault, his compatriots protected him from identification and arrest. From many conversations with police not only in DC, but in Houston, Buffalo and with Federal Marshals, I know that law enforcement is much more concerned with the behavior of the more radical pro-choice liberal activists such as NWROC, R&R, Act Up and Queer Nation than they are with Operation Rescue.

Other forms of violence and intimidation have been employed by pro-choice activists. I spent several hours discouraging members of Act Up/NYC from gluing shut the doors of the hotel where OR was housed in Westchester County, NY in January 1991. Later the next morning, they did succeed in slashing tires in the hotel parking lot. The tires they damaged did not, in fact, belong to the pro-lifers but were vehicles owned by the hotel. In Buffalo, some members of the clinic defense coalition (Buffalo United for Choice) wanted to do a middle of the night raid on the OR hotel parking lot and pull tire stems. I stayed with one of the leaders of that organization and know that devices for doing that were purchased by someone in the organization. Again, fortunately cooler heads like my hostess prevailed and tires were not tampered with. However, someone did damage a privately owned bus that was in the parking lot of the church which was being used as the OR mobilization and rally site. Many clinic defense training sessions encourage "hassling" of pro-lifers.

I have been told many times by pro-life rescuers that they have been personally harassed by pro-choice activists. A woman, who was once a Planned Parenthood employee, spoke of having her breasts fondled during a rescue in Northern California; a pro-life photographer who documents on activities on film but does not participate in actual blockades has spoken frequently of being harassed by members of BACOR (Bay Area Coalition to Stop Operation Rescue) one of the more radical clinic defense organizations. He has been followed, threatened. Many of the more visible pro-life people I know personally, have expressed some degree of concern for their personal safety. Hate mail and nasty phone calls are not out of the ordinary for them.

Clearly there is a need for enforcement of existing local and state laws pertaining to assault upon another person. However, most local law enforcement agencies do not appear to take seriously the breaches of law and good conduct during abortion clinic related blockades and activities.

Mr. SCHUMER. Let me say that certainly at least speaking for myself I want to stop all violence.

Maybe you will join us in supporting legislation to do just that.

Let me first ask a number of questions. Mr. Terry, we saw that nice peaceful film there, and the Operation Rescue Abortion Busters manual.

Mr. TERRY. By the way, Mr. Chairman, I have never seen that manual before.

Mr. SCHUMER. Never seen it.

Mr. TERRY. Operation Rescue has become a name.

Mr. SCHUMER. Operation Rescue California has nothing to do with you? Is this a forgery?

Mr. TERRY. I cannot speak for Operation Rescue California.

Mr. SCHUMER. You have nothing to do with Operation Rescue?

Mr. TERRY. I am the founder of Operation Rescue. The name has become synonymous with the movement. Things happen all the time.

Mr. SCHUMER. Let me ask you this. If some manual said, "In order to attack your local abortionist, you first have to identify your target," would that language bother you?

Mr. TERRY. Yes. It is still protected speech.

Mr. SCHUMER. Let me ask all of you, Reverend Foreman said, and everyone agreed, having bricks thrown through windows is wrong. What about somebody going to the children of a doctor who performs abortions and constantly says, "Your father is a baby killer." Is that a tactic that is part of your civil disobedience? Would you condemn that kind of tactic?

Mr. TERRY. I am personally not in favor of that type of activity. That is not civil disobedience, that is first amendment speech.

Mr. SCHUMER. Mr. White.

Mr. WHITE. First of all, I don't know of that happening. My answer to this hypothetical, which I believe that it is, is no, they should not do that absolutely—

Mr. SCHUMER. Reverend Foreman.

Reverend FOREMAN. What you said was constantly going on.

Mr. SCHUMER. Should they go once?

Reverend FOREMAN. To go once, to show what is being done, yes, because that is explaining what the child's father does.

Mr. SCHUMER. Mr. Terry, you heard that Operation Rescue or Plan which at least our doctor from Dallas said was part of Operation Rescue—

Mr. TERRY. That is not true.

Mr. SCHUMER. Totally unaffiliated?

Mr. TERRY. Yes.

Mr. SCHUMER. Have you ever met with the people from Plan?

Mr. TERRY. Plan of Dallas, yes.

Mr. SCHUMER. You met with them. Dr. Wilkinson testified that members of Plan went to the employer of Dr. Wilkinson's wife and said they ought not to hire her any more. Would you condemn that kind of tactic?

Mr. TERRY. I don't remember him saying that. You are saying if he went to the employer—

Mr. SCHUMER. The Boy Scouts. He said she works for the Boy Scouts. They went and harassed her at work and said she shouldn't work there.

Mr. TERRY. That is their right if they want to go to her employers.

Mr. SCHUMER. Would you condemn that?

Mr. TERRY. I wouldn't do that, but it is their right to do it.

Mr. SCHUMER. Would you condemn that?

Mr. TERRY. I am not going to condemn someone's first amendment rights. Would you?

Mr. SCHUMER. Mr. White.

Mr. WHITE. I believe if something is protected under the first amendment, that is a sacred document.

Mr. SCHUMER. I am not asking your opinion as a constitutional expert.

I didn't mean it to be funny.

Mr. WHITE. I don't claim to be a constitutional expert. I happen to be a lover of the first amendment.

Mr. SCHUMER. Reverend Foreman.

Reverend FOREMAN. I wouldn't condemn it because I don't think it is condemned by the first amendment.

Mr. SCHUMER. Let's just go over a few others of these tactics. What about following and videotaping a physician 24 hours a day? What do you think of that one?

Mr. TERRY. Well, Mr. Schumer, I have been followed, I have been harassed, I have been threatened.

Mr. SCHUMER. That is not the point. You know, part of your refrain here is two wrongs make a right. I don't believe that. I don't think you do. I am asking you what you think of it as a tactic.

Mr. TERRY. I have no knowledge and I don't think you do—

Mr. SCHUMER. I am not asking you that. I am asking you as a tactic—

Mr. TERRY. Mr. Schumer, with all due respect, if you let me answer the question, I will do it.

Mr. SCHUMER. You are not answering it properly.

Mr. TERRY. I am not answering it the way you want me to.

Mr. SCHUMER. I know the way I want you to answer it. You are not answering it either way.

Mr. TERRY. I don't know any human being in the world that is capable of holding a video camera for 24 hours a day.

Mr. SCHUMER. What if there was a team?

Mr. TERRY. Of people videotaping a man?

Mr. SCHUMER. Following him in every waking moment.

Mr. TERRY. In our State, that would be illegal. I would not support that.

Mr. SCHUMER. How about in other States?

Mr. TERRY. If it is not illegal and if that State recognizes it as a first amendment activity, frankly, I wouldn't even do it then.

Mr. SCHUMER. Mr. White, what do you think?

Mr. WHITE. I think that would be a ridiculous waste of anybody's time. Would I endorse it as a tactic, the answer would be no.

Mr. TERRY. I would like the record to reflect you have treated us with tremendous rudeness, Mr. Schumer.

Mr. SCHUMER. That is your opinion. The record will reflect what people read into the record. I am trying to get answers here.

Mr. WHITE. May I finish?

Mr. SCHUMER. Go ahead.

Mr. WHITE. I just simply would state that if the literature you have in front of you from our organization concerning the exhibits on the No Place To Hide campaign, you will find none of these things you brought up are even suggested and they are not a part of the No Place To Hide campaign.

Mr. SCHUMER. Reverend Foreman.

Reverend FOREMAN. I don't do that sort of thing. I think it would be impossible to do. I would simply say I don't know whether it is first amendment activity or not. If it is protected, I would say protect it.

Mr. SCHUMER. If it is not?

Reverend FOREMAN. If it is not, prosecute.

Mr. SCHUMER. Let me ask you this—and by the way, none of these tactics, of course, were ever used by Dr. King. In fact——

Mr. WHITE. Nor us, Mr. Schumer.

Mr. SCHUMER. Nor by any of you. It is good to hear that on the record.

Let me ask you this: The question I have here is your intent, Mr. Terry, you said doctors are the weak link.

Mr. TERRY. That is correct.

Mr. SCHUMER. In the proabortion movement. Are these activities that we have heard about from the other four witnesses intended to educate doctors or intimidate doctors? Is it your intent at all to intimidate doctors?

Mr. TERRY. Our intent, and I make this clearly and plainly and proudly on the record, our intent is, number one, to stop child killing. Number two, in the interim to——

Mr. SCHUMER. If you harass doctors, would you support it?

Mr. TERRY. I would expose them in the community. I would hope they would be disgraced. I would hope they would be humiliated for the murder of innocent children.

Mr. SCHUMER. Isn't that intimidation?

Mr. TERRY. I don't think so.

Mr. SCHUMER. You don't think so?

Mr. TERRY. No.

Mr. SCHUMER. How do you humiliate somebody?

Mr. TERRY. If under *Furzy v. Schultz*, as the Supreme Court ruled, if somebody wants to picket in a neighborhood, they have a big sign that says doctor so and so pays for his mortgage with blood money, I think that would fairly well disgrace him.

I think that is protected speech. So do you, I believe. If he decides to quit killing children as result of our first amendment activities, then we rejoice.

Mr. SCHUMER. Do you do that, follow him with signs wherever he goes?

Mr. TERRY. No.

Mr. SCHUMER. Do you believe the four witnesses who were here? Do you think what they told was the truth?

Mr. TERRY. I think most of it was. I also think it is exaggerated. For example, the lady having the brick thrown through her win-

dow. That is horrifying. Repugnant. There are already laws against that. That is not what this is about, sir. That is not what these hearings are about. That is not what this law is about.

Mr. SCHUMER. Yes, it is. Not the brick, but these other activities we have heard about from not only these witnesses but from all over the place. Your goal is to close clinics wherever you can and prevent doctors from doing abortions.

Mr. TERRY. That is only part of it.

Mr. SCHUMER. You certainly do not do it by a typical campaign of whatever you want to call it. Lobbying, letter writing, educating. You do it by intimidation.

Mr. TERRY. Look at this: "Randall Terry unmasked as spawn of Satan. Should have had an abortion, mother sobs."

Would you call this typical, Mr. Schumer?

Mr. SCHUMER. I don't even know what it is.

Mr. TERRY. It is something the proabortionists spread around all over the place. Wanted posters with my name on them. Intimidation. That is first amendment speech.

Mr. SCHUMER. Would you support legislation dealing with intimidation if it was no longer education, if it was beyond coercive speech?

Mr. TERRY. If someone says to you I am going to in any manner, shape, or form bring physical harm to you——

Mr. SCHUMER. Threaten you?

Mr. TERRY [continuing]. With physical harm. That already is a crime. Now if someone stands in front of your neighborhood and goes back and forth and says Mr. Schumer's hands are drenched in the blood of the innocent, that is first amendment speech. If it annoys you, that is the price of freedom.

Mr. SCHUMER. That is perfectly understood by me.

Mr. TERRY. This is first amendment speech.

Mr. SCHUMER. No question about it. What your impact teams do according to reports is to train in electronic surveillance; correct?

Mr. TERRY. I do not run impact teams.

Mr. SCHUMER. You don't know how your impact teams run?

Mr. TERRY. They are not mine.

Mr. SCHUMER. He says so.

Mr. TERRY. Who is he? His name is Reverend Tucci. I have not talked about electronic surveillance. I will say——

Mr. SCHUMER. You never talked to him about what happens at the impact teams?

Mr. TERRY. I talked to him about——

Mr. SCHUMER. This is one of your associates. Last year when you weren't going to testify, you sent him.

Mr. TERRY. No. I was never invited. I would have been glad to testify.

Mr. SCHUMER. Yes. You couldn't make it.

Mr. TERRY. That could be.

Mr. SCHUMER. You sent Reverend Tucci.

Mr. TERRY. That is not an accurate rendition of the facts.

Mr. SCHUMER. That is who Operation Rescue sent. You don't talk to him about what happens in this Operation Impact at all?

Mr. TERRY. Of course, I do.

Mr. SCHUMER. Oh, you do. You just said you don't. You said you don't know what happens. You just contradicted yourself.

Mr. TERRY. That is not accurate, Mr. Schumer. If you would let me finish. This is not a trial, you are not a prosecutor.

Mr. SCHUMER. I am trying to get answers here.

Mr. TERRY. No. You are badgering the witness.

Mr. SCHUMER. We have a serious problem, a very serious problem.

Mr. TERRY. That is true.

Mr. SCHUMER. Operation Rescue has participated, in my judgment, in creating problems despite your denials today. So I am trying to figure out what Operation Rescue does. Do you advocate surveillance of—

Mr. TERRY. Would you please define electronic surveillance?

Mr. SCHUMER. Have you ever advocated that word?

Mr. TERRY. No.

Mr. SCHUMER. Ever?

Mr. TERRY. Electronic surveillance, no.

Mr. SCHUMER. Surveillance?

Mr. TERRY. As in what?

Mr. SCHUMER. Have you advocated surveillance?

Mr. TERRY. I don't remember saying that. Explain it to me and I will happily tell you if I agree.

Mr. SCHUMER. Have you advocated surveillance? Yes or no?

Then I want to ask you what it is because you have advocated it.

Mr. TERRY. Why don't you tell me what it is you think I have advocated.

Mr. SCHUMER. Tell me what you mean when you say there should be surveillance. OK.

Mr. TERRY. I am very sorry, Mr. Schumer, that you don't understand.

Mr. SCHUMER. What do you think of this one? We are using a lot of investigative techniques. We are going to find out everything we can about these people. What does that entail?

Mr. TERRY. First of all, I did not write that. I am sure it would entail things like where do they live.

Mr. SCHUMER. That is Reverend Tucci.

Mr. TERRY. Where do they live, where do they go to church.

Mr. SCHUMER. Why?

Mr. TERRY. So that we can use our first amendment privileges to expose them, to humiliate them, to disgrace them, which is our right, sir, which I probably—

Mr. SCHUMER. Let me ask you something. How close is the line, do you think, between humiliating and exposing and threatening? Is that an easy distinction to make?

Mr. TERRY. Between threatening?

Mr. SCHUMER. Threatening as opposed to exposing and humiliating.

Mr. TERRY. There is a grand canyon of difference.

Mr. SCHUMER. I am glad you see it. Many don't.

Mr. TERRY. Maybe you aren't—

Mr. SCHUMER. Let me ask you, Mr. White and Reverend Foreman, do you advocate surveillance?

Mr. WHITE. Surveillance in terms of, you mean, gathering of information on the abortionists, then, yes.

Mr. SCHUMER. What relevance does the surveillance have in trying to educate and persuade them not to do it. Or is it aimed at intimidation?

Mr. WHITE. No. In fact it definitely is not aimed at intimidation. What you will find is that many, many abortionists are bottom feeder type doctors and what you get is multiple malpractice lawsuits. And so what we do is we gather this information.

Mr. SCHUMER. How about the doctor from Dallas, is he a bottom feeder abortionist?

Mr. WHITE. I have no idea. I can tell you Dr. Kanealy, who is——

Mr. SCHUMER. I didn't ask you about him. I asked you about this doctor. Are any of these people bottom feeder abortionists?

Mr. WHITE. Sir, I have never met any of them.

Mr. SCHUMER. You heard their testimony.

Mr. WHITE. And I have only heard their testimony.

Mr. SCHUMER. My guess is not in this room. When you are talking to your minions, you would call people just like these people bottom feeder abortionists, that is my guess. I think you are being disingenuous before us here. I think you are.

Mr. WHITE. Sir, you asked me a question.

Mr. SCHUMER. I asked you a question, I didn't ask you about Dr. Kanealy.

Mr. WHITE. The point is you asked about surveillance, sir, and the question refers around this: They have multiple lawsuits, they are dangerous places to go, it is not safe and legal, and women should have the right to know, does their right to choose——

Mr. SCHUMER. Is Presbyterian Hospital a safe and legal place to go even though it performs abortions?

Mr. WHITE. I will give it the benefit of the doubt until such time as I have done an investigation and found out if they are doing medical practices that are——

Mr. SCHUMER. Are you an expert on what is safe and legal and healthful? What are your credentials there?

Mr. WHITE. No, but I have a right to an opinion, and I have a right to share that opinion with women approaching abortion clinics. That is why you investigate, sir.

Mr. SCHUMER. Reverend Foreman, on January 27, 1993, you said on a radio station that doctors who perform abortions are like wild animals who have had a taste of blood and what you have to do is go and take it out. What did you mean by that?

Reverend FOREMAN. I honestly don't recall making that statement.

Mr. SCHUMER. You did on a radio station on January 27, 1993.

Reverend FOREMAN. I would have to see the context of it. I honestly have no recollection of that statement.

Mr. SCHUMER. It was WVCY. Did you do an interview on that day?

Reverend FOREMAN. I am aware of the radio station. I have a half-hour show every morning from 8 to 8:30. I am unaware of that. You understand, I mean, I would have to see the context of it. It may have been somebody else because I am not the only one who does that show, and they may have been——

Mr. SCHUMER. No, it was you.

Reverend FOREMAN. Fine. What I am saying is I have no recollection of it.

Mr. SCHUMER. You have no recollection of something you said 2 months ago. OK. You have been quoted as referring to people in your movement who were devoted to nonviolence as wimps and condone the use of violence in response to injunctions. Is that false too?

Reverend FOREMAN. I am sorry, Mr. Terry was saying something.

Mr. SCHUMER. You have been quoted in the media as referring to people in the prolife movement, those devoted to nonviolence as wimps.

Reverend FOREMAN. Yes, yes, and I will tell you exactly what I meant by that. If you recall the quote in there, if you look at the scale of various responses, you can take when somebody sincerely believes that human life is at stake, and you will see that what we are doing is very restrained, very weak, very small, that we go and make sure that everybody stays alive, and we are viewed as wimps by the extremist type of persons.

Mr. SCHUMER. You are including yourself in the wimps?

Reverend FOREMAN. Yes. And my whole point was to mock the people who call us extremists. There are extremists out there. Don't confuse the two genres.

Mr. SCHUMER. How about this one? This one you are talking to your own people, and you say you advocate peaceful protest. But in Milwaukee you told protesters that if they felt led, they should rush the clinic doors. You assured them that the penalty if they were arrested would amount to nothing more than a parking ticket.

Is that peaceful?

Reverend FOREMAN. First of all, I did not say rush the doors. That is not a direct quote. That is never something I would say. That is classic proabortion clinic defense terminology. I said go to the doors if you have an opportunity. Yes, that is something I said. That is peaceful. I am the one who developed the whole idea of crawling so that you can avoid any appearance of violent activity.

We started that back in Atlanta. It has become one of the hallmarks of the movement, that we crawl because you can't accuse a crawling person of violence.

Mr. SCHUMER. I think what we have established here, though, is, although all three, Mr. White, Mr. Terry, and Reverend Foreman deny that their groups do some of these activities we have heard about, I remain somewhat skeptical of that. But we also have heard each of you say that some of the activities we have heard about here, while you say they are protected by the first amendment, are to be condemned. The ones we mentioned before, correct?

And I think that is important, that you folks condemn those kinds of activities whether you view that those activities are protected by the first amendment is something that this committee will explore. But I think it will be helpful, at least to me, that even people like yourself—and I understand you are driven by a moral belief, and I respect people who are driven by moral beliefs—I don't respect when they impose moral beliefs on other people, not through the democratic process, believe that certain activities should indeed be condemned, and we are going to see if we can le-

gally do something about them without violating the first amendment.

Mr. SENSENBRENNER.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. I assume the 5-minute rule is back being imposed now whether by the chairman or by the fact that we have a rollcall that is going on, so I will just ask a couple of very brief questions.

Mr. GLICKMAN. I want to make sure we all have the opportunity to ask questions of these witnesses.

Mr. SCHUMER. We will, indeed.

Mr. GLICKMAN. Are we going to adjourn at some point in time?

Mr. SCHUMER. We are going to take a vote and come back, no problem.

Go ahead, Mr. SENSENBRENNER.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. In the statement opening his line of questioning of this panel, Mr. Schumer said that he deplores violence on both sides, and I am sure we all share that opinion because violence has no place in either civil disobedience, political protest, or peaceful picketing.

Can the four witnesses please inform the panel how Mr. Schumer's legislation protects prolife demonstrators against violence done by prochoice people who are counterpicketing in front of the abortion clinics?

Mr. TERRY. Well, obviously my reading of the legislation shows that it is absolutely selective in its prosecution. It is coming after us and it has no remedy whatsoever to stop the ongoing violence, people biting our people and saying "I have got AIDS," people spitting at our people saying, "I have got AIDS."

We have a witness who was in a homosexual activist group where they discussed whether or not they wanted to use the tactic of biting and spitting as a regular tactic to try and intimidate us with people who were known AIDS carriers.

We are nonviolent. We will continue to be nonviolent, but this law is targeted at us to try and crush a movement, not to deal with violence.

Mr. SENSENBRENNER. You think that issue—specific legislation, in other words, singling out people who are on one side of a specific issue, is constitutional?

Mr. TERRY. Absolutely not. I want to know, will anyone who for any protest that I agree with or disagree with, will they be subjected to Federal prosecution? Will the animal rights activists and the AIDS activists who sit in at laboratories or at churches, will they be brought to trial under this legislation?

Mr. SENSENBRENNER. The answer is no. That is clear from the text of the bill.

Mr. TERRY. Then why are we being singled out?

Mr. SENSENBRENNER. Well, I voted against it last week, so you will have to ask those who supported it.

Mr. White, can you answer the question?

Mr. WHITE. I would simply say this, my home has been picketed, my church has been picketed, and those are protected under the first amendment right, and I say you are welcome any Sunday you want to come to my church or any day you want to come to my home.

But I have also been assaulted, my family has been threatened with death, I have six children, I receive telephone calls, we have had our church windows knocked out and things like this. Those are not protected, but I don't seek the Federal Government to protect that because you can't.

You open a Pandora's box to every form of protest. There is adequate remedy at law to prevent those kinds of things against me. They are as bad against me as they are against the doctors sitting here, but there is adequate remedy at law, and this law only singles out a form of political protest.

Mr. SENSENBRENNER. Reverend Foreman.

Reverend FOREMAN. Well, the fact of the matter is, as I read this legislation, it has nothing to do with violence at all. Violence is defined by this legislation, if violence is defined at all, as the act of sitting in front of a door of an abortion clinic if your motive is prolife. If your motive is to get higher pay—

Mr. SCHUMER. Will the gentleman yield?

Mr. SENSENBRENNER. We are going to have to go and vote. I have one other question of Reverend Foreman. Would you please continue answering.

Reverend FOREMAN. If your motive is prolife, you can be given 3 years in jail. If your motive is to get higher pay, you can't even be arrested under this law, so the issue here is not violence except as defined by blocking a door.

Mr. SENSENBRENNER. OK. The final question I have of Reverend Foreman is that the previous panel talked about the fact that your groups have not been prosecuted by Milwaukee authorities for violations of the law, and I am somewhat familiar with the written procedure that district attorney, E. Michael McCann of Milwaukee County, who happens to be a Democrat, not a Republican, was long before these protests began.

Could you please explain what types of prosecutions people from your group, who have been arrested, have faced and give us some information about how the McCann policy applies to you.

Reverend FOREMAN. Yes, E. Michael McCann has had a long-standing, as I understand, 20-, 30-year policy of not using State charges in order to prosecute conscientious offenders who are non-violent. This has been applied to all the special interest groups, and he says it ought to be applied to this politically inappropriate special interest group as well.

In fact, almost 83 percent of the people who are arrested in Milwaukee do pay their municipal city fines, they do pay their fines. The vast majority of those who don't, and right now there are about 10 to 15 of them, go to jail and are spending months and months in jail in Milwaukee.

Mr. SENSENBRENNER. OK. I would like to make it quite clear that under Wisconsin law, someone who is arrested for a whole host of violations can be prosecuted either as a municipal ordinance violation, which is done by the city attorney or prosecuted on a State charge, which is done by the district attorney.

Your folks are not escaping prosecution, are they?

Reverend FOREMAN. No, they are not. I myself spent 4 months in jail for one sit-in.

Mr. SENSENBRENNER. Thank you very much.

Mr. SCHUMER. Thank you, Mr. Sensenbrenner.

Before we adjourn, I would make two points. One, this legislation is not intended to address violence, even the horrible type of violence Dr. Gunn was subjected to. It is dealing with blockades. It would equally apply, if you have read it, to prolife or prochoice blockaders. It is neutral to that effect.

If you were to open up a clinic that was to persuade women not to have abortions and prochoice people would obstruct that clinic, the legislation would apply exactly equally.

Reverend FOREMAN. How about if I bought a Cracker Barrel franchise? Would it apply to a Cracker Barrel franchise?

Mr. SCHUMER. It is a Federal right, Reverend Foreman, of reproductive services. If you can tell me the Federal right at stake in a Cracker Barrel franchise, maybe we will look at legislation. Last year we did do something about animal rights.

Reverend FOREMAN. Freedom of association to do business.

Mr. SCHUMER. No, no, that is not a Federal right. You should go back to your law books. We will take a—let's say we will come back at 25 after and resume the questioning of this panel.

[Recess.]

Mr. SCHUMER. The hearing will come to order.

Now we are up to Mr. Glickman.

Mr. GLICKMAN. Thank you. Let me ask this question of Mr. Terry, Mr. White, and Reverend Foreman. Try to answer it as quickly as you can. Do you believe that as the law currently is, that abortion as defined and limited by the Supreme Court is a constitutionally protected right?

Mr. TERRY. Absolutely not. Abortion is the murder of innocent children, and it is not protected.

Mr. GLICKMAN. Under the Constitution as has been interpreted by the Supreme Court. I am not saying you agree with it. I understand you are trying to change it, but I am just asking you, do you accept the fact that it is a constitutionally protected right?

Mr. TERRY. No, I do not, any more than I would have if I had been a Northerner when the Supreme Court ruled in *Dred Scott* that a black man was chattel property. I would refuse to accept it as a constitutional right.

Mr. GLICKMAN. Basically you then say you selectively pick, you believe in some natural law. You don't believe that what the Court says as interpreting the Constitution creates a protected right, then? That is an important point.

Mr. TERRY. Very good point, Mr. Glickman. Let me answer it very concisely. God gave Moses the Ten Commandments. The Ten Commandments must be the foundation of this Republic. If they are not, then we will have laws and lawmakers who are blasphemous; idolatrous; lazy; stealing; adulterating; no offense to certain Members of the Senate, people who are making laws in this culture.

Mr. GLICKMAN. I understand that, and I understand what you are saying. But again I point out, and you may disagree with the nature of the law, but do you believe that abortion is a constitutionally protected right as interpreted by the Supreme Court? That is all I am asking.

Mr. TERRY. Was there a factual decision called *Roe v. Wade* where the Court said that women have the right to kill their offspring? Of course there was. But do we acknowledge it as binding or valid? Absolutely not.

Mr. GLICKMAN. OK. But then you believe there is a higher law over and above that?

Mr. TERRY. The Ten Commandments, of course.

Mr. GLICKMAN. The reason why I am saying that is quite honestly, obviously you would recognize that if we selectively in this country decided which laws to obey and which laws not to obey, we face the consequences from that, and you have done that, right?

Mr. TERRY. Of course.

Mr. GLICKMAN. So you don't like the law, and you would like to influence a changing of the law. You don't believe people should obey the law, but you do understand that it is the law, that is why you are engaging—

Mr. TERRY. That is why we get arrested.

Mr. GLICKMAN. That is why you are engaging in civil disobedience to try to change the law. Is that a fair statement?

Mr. WHITE. Yes, sir, to say that it is not a law or that *Dred Scott* wasn't a constitutional right to own slaves or *Plessey v. Ferguson* or any numerous other decisions that have been bad throughout history, it is definitely a law, and I believe that women have, under the current Constitution as interpreted by the Supreme Court, the right to kill their child. But that doesn't make it right, and I should have the right also to civilly dissent without undue Federal prosecution.

Mr. GLICKMAN. I understand that. Reverend Foreman. Then I am going to ask a question of Ms. Hudson. I don't want to leave you out because I think you are an important witness here. Go ahead.

Reverend FOREMAN. I think the Supreme Court, as it is defining what the Constitution says, is agreeing now that it is a constitutional right. That is the very narrowest form of your question. I would say that is what the Supreme Court is saying.

Mr. GLICKMAN. A government of laws requires people in a free democratic society to operate within a social contract. If they don't like the laws, they try to change the laws, and they try to change them legally, or they try to. If they want to go down an illegal road, they accept the consequences for that.

Reverend FOREMAN. There are some mechanisms in the Constitution itself—for instance trial by jury—which recognize the fact that wicked people can pronounce wicked laws and therefore you have a trial by a jury of your peers.

Mr. GLICKMAN. That is the unique thing about America, it gives people checks and balances to try to change the laws and change the system, but to do it within the confines of understanding that we operate within the rule of law, generally, of course.

Reverend FOREMAN. Precisely. That is the whole point of an act of civil disobedience. It wasn't the Congress that gave us abortion on demand, it was the judiciary. And the only way to get standing for that preborn child is to replace him with your own body and your life. Then you get standing in the branch of government that has enacted the wicked child-killing law.

Mr. GLICKMAN. OK. Now, let me ask you this: I want to try to define civil disobedience, what we are talking about here. Is civil disobedience lying in the way, in the direct line of somebody wanting to get from point A to point B in order to get in a door? Is that civil disobedience, physically having your body so somebody can't get through to a particular point? Is that civil disobedience?

Mr. TERRY. It may be, it may not be. I don't understand.

Reverend FOREMAN. I don't think it would be, necessarily. It depends on what they want to do inside. If someone wants to kill another human being inside, you are not breaking a law to save that person's life. All the injunctions in the world wouldn't stop you from going into an abortion clinic on fire, for instance, and bringing even the doctor out.

Mr. GLICKMAN. But in this case where you have a constitutionally protected right to an abortion, like it or not, lying in front of that door to prevent somebody from going in would be an act of civil disobedience, yes or no?

Reverend FOREMAN. Technically defined, yes.

Mr. TERRY. But there are already laws that we are arrested and prosecuted under. Our point is this is overkill, and it is abusive in its very core.

Mr. GLICKMAN. I think there are a lot of issues here. One is the first amendment rights versus nonprotected other constitutional rights. The issue is you have a constitutional right to abortion, and what role should the Federal Government play in protecting that constitutional right vis-a-vis the constitutional right to protest.

We have a situation here where we have competing constitutional rights. I am speaking now more as a lawyer than I am speaking as somebody who has been presenting a perspective on this thing. What we are trying to wrestle with here is how to preserve the right to protest and still preserve the nature of a society which respects the rule of law.

Because you obviously agree that if everybody in our society decided there were laws they didn't like for religious reasons—and let me tell you, I get a lot of mail from people who have laws they don't like because of religious reasons, for example, not paying their taxes to fund the Defense Department. I have a lot of people who don't like that law and choose not to pay their taxes and choose the consequences for that.

But if everybody who saw laws they didn't like and chose to actively engage people not to obey those laws, you would have a society that would be in absolute and total chaos, so—

Reverend FOREMAN. If that is your purpose in this legislation, then I recommend that you write it in such a way that nobody can block any door or go into any building to have a sit-in, any building for any purpose for any reason or they risk whatever the penalties of this legislation is. That is where you are unconstitutional, when you shove it down to hit just us.

Mr. GLICKMAN. That is something we are going to explore further. I am not sure you are right because I am not sure that protecting another constitutional right may allow some latitude in that area, but I understand your point.

Now, let me—

Mr. TERRY. If I may make one quick point, very quick. We agree that we do not want social anarchy, but the issue in question is not whether or not we pay taxes, not whether or not we go to certain facilities, it is a life and death issue.

Mr. GLICKMAN. I understand that, but it is also another issue that at least, as the Court has determined it, there is a constitutional right to be protected there and you have—the point is that you want to change that law once you get to the point of wanting to prevent people from exercising their constitutional rights, then you have got a major conflict. That is what we are talking about right here.

Mr. WHITE. Just real quickly. If the Court is concerned about the rule of law—I am sorry, the Court, I have been in there too many times, I guess. If this subcommittee is concerned about the rule of law, and I hear a lot about that, then I plead with this committee to not enact this because the Nation will see that you are singling out one single protest group, and you are focusing on that group. That is unfair and that will bring the whole Nation's respect for our laws down.

Mr. SCHUMER. Would the gentlemen yield?

Mr. GLICKMAN. I would be glad to yield.

Mr. SCHUMER. I just want to let you and Reverend Foreman know it is perfectly constitutional to draft a Federal law to single out a single Federal right. That has been done over and over and over again. The only question that you are bringing up is, does that violate a free speech clause? But we have books full of laws aimed at protecting a single Federal right.

Mr. GLICKMAN. I'd like to ask one more question because I am going to run out of time. I am going to ask you all the same hypothetical I asked the panel before, put yourselves in prochoice shoes, OK? Put yourself in a situation where you believe strongly in the constitutional right to have an abortion, as unpalatable as it is. It is a law school exercise now.

What do you say if you run a clinic or you want to have an abortion under law that is permitted, and what do you say if your offices are routinely bombed or destroyed or if the police are not wanting or capable of doing anything? I am not saying that this is happening, I am saying put yourself in those shoes.

Now, how do you answer this?

Mr. WHITE. I would answer it the same way because I experience every one of those—except for my father wasn't shot. I experience every single one of those complaints that they have, and I experience them on a daily basis, and I know the threat, I am familiar with the threat. I don't like the threat, but I love the Constitution that gives them the right to do those things that are legal, and so my position wouldn't change.

I love this country, and I love the first amendment. We need to protect it. It is just invalid what they are saying about us. They are singling us out. It isn't true of only proliferators. It is true of evil people across this country.

Mr. GLICKMAN. But let's say that you are on the other side and you see you as evil people, OK? I am just telling you kind of how the world is working here, that others see you as evil. You know

that, Mr. Terry. You obviously know that other people see you as evil. You accept that and go on with your way of life.

Mr. TERRY. I would hope that would be—

Mr. GLICKMAN. Let's assume for a moment that you were Ms. Hill that testified before here. I want to know what you would think of all this stuff. Then I am going to ask one last question.

Mr. TERRY. If I were Ms. Hill, I would cry out to God for mercy and repentance, that is all.

Mr. GLICKMAN. That doesn't quite answer my question.

Mr. TERRY. That is the only thing I can say.

Mr. GLICKMAN. I understand that, but the fact is we do have to understand the world the way other people see it. We may want to change them, but we want to understand the way they see it.

So I am saying if you honestly believe this constitutional right needed to be protected, Reverend Foreman, how would you feel if the door were blocked and you couldn't get in and you were intimidated and harassed?

Reverend FOREMAN. First of all, I would not be ashamed for one moment of what I did for a living, and I wouldn't be ashamed—I would enter into evidence in a hearing like this the videotaped footage of what abortion is, and say see those arms and legs, the crushed skull, that is what I do for a living, I stand behind that, I am not ashamed of it.

Mr. GLICKMAN. OK, one final question.

Ms. Hudson, you are an interesting phenomenon here at this hearing. You are a person who is a clinic—what do you call yourself?

Ms. HUDSON. Defender.

Mr. GLICKMAN. Defender. Have you changed your views on the subject of abortion or—what do you make of all this? What are you here for?

Ms. HUDSON. I am here to make sure that the prolife are not singled out to be the only people charged with violence in front of clinics because there is an equal amount of violence, intimidation, harassment, surveillance, following, bothering people's children by the prochoice people.

Mr. GLICKMAN. Have you personally experienced this?

Ms. HUDSON. Yes, I have even done it.

Mr. GLICKMAN. You have. What have you done?

Ms. HUDSON. I followed a woman who left, picketed a doctor's house with the intent of harassing and scaring her. I have taken down license plate numbers, I have gotten as much information about people as I could to be used against them.

Mr. GLICKMAN. Now what has caused you to, so to speak, change your views? I am trying to figure out why you are here. I am not questioning your motives. I am just trying to figure out why you are here.

Ms. HUDSON. When it comes down to law, if I am breaking the law and I am standing on the prochoice side of the street, I should be equally guilty as if I were on the prolife side of the street doing the same thing.

Mr. GLICKMAN. We would hope that you would be, but in your case, have you had a change of view on the issue of abortion or is this unrelated to that issue?

Ms. HUDSON. Unrelated to that issue.

Mr. GLICKMAN. You don't have to answer this question, but do you support the decision of *Roe v. Wade*?

Ms. HUDSON. At the present time for me, most if it, yes.

Mr. GLICKMAN. Most of it, OK. I thank you very much.

Mr. SCHUMER. Thank you, Mr. Glickman.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. Mr. Chairman, I must say your hearings are never dull.

Mr. SCHUMER. I have got to keep you guys on your toes.

Mr. SCHIFF. Appreciate that.

Mr. Terry, Mr. White, and Reverend Foreman, I believe that you were invited here because you are associated with organizations that—a movement that is known, and I think in the context of this bill, the question is where would your organizations—and I understand you are not claiming responsibility for others who are out there, I am talking about the organizations with which you identify, fit in with some of the incidents and activities that we have heard described by the first panel.

So to the extent I have time, I would like to run through some questions and I would like to know if your organizations advocate them. If the answer is no, do you think they are constitutionally protected free speech anyway, even if your organization doesn't advocate them? I intend to give you time to answer.

Mr. TERRY. Thank you.

Mr. SCHIFF. Let's start with the obvious, direct violence, like the killing of Dr. Gunn.

Mr. TERRY. Of course not.

Mr. SCHIFF. What about vandalism that does not inflict injury on a person, arson to an abortion clinic?

Mr. TERRY. I have stated many, many times publicly that we do not condone that behavior and that we believe it is counter-productive, and we are committed—I don't know any other way I can say this, Operation Rescue is committed to nonviolence, period.

Mr. SCHIFF. Let me come down another item.

I assume that Mr. White and Reverend Foreman agree or they would state something to the contrary?

Reverend FOREMAN. Absolutely.

Mr. SCHIFF. Thank you. What about sending a threat, a direct threat—let me define that. If you don't stop being involved in abortions, there will be a violent attack on you or your house or your person?

Mr. TERRY. Absolutely wrong.

Mr. SCHIFF. What about what has been called generally stalking, and defining that as a problem, antistalking statutes. But it has been generally described as following someone on a regular basis, on an extended basis, everywhere they go with the intent of intimidating them as to what you are going to do next, making your presence known.

Starting with Mr. White, do you wish to answer first?

Mr. WHITE. Well, in California we have an antistalking law, and I am the founder of the No Place To Hide campaign. We had 38 No Place To Hide campaigns in the State of California and not a single police report on stalking, so what we do is not related.

When we talk about picketing residential neighborhoods, we are against stalking, it is against the law in California, and I think it would be wonderful if it was against the law everywhere in the Nation. A person shouldn't be stalked.

Mr. SCHIFF. Mr. Terry.

Mr. TERRY. I have been stalked so many times in various situations that it is unfortunate that I have become accustomed to it.

Mr. SCHIFF. But obviously you don't advocate it then?

Mr. TERRY. No, of course not.

Reverend FOREMAN. I think there is a difference between stalking and gathering of information. There was a bit of an exchange here. It seems clear to me that there are certain legitimate things to do to gain information, and then there is going further than that, where you are actually physically intimidating people with physical harm.

Mr. SCHIFF. What kind of information would you want to gather, Reverend Foreman?

Reverend FOREMAN. Well, we have a pile of news articles right here about women who have been killed by safe, legal abortion in safe, legal abortion clinics and getting that information out to other people who may be going into those clinics.

The reason you go and find that out is to find out precisely whether or not that sort of situation exists in Presbyterian Hospital, for instance.

Mr. SCHIFF. Well, let me give a couple other examples. I am sorry, Mr. Terry?

Mr. TERRY. Yes, I will be even more specific.

Mr. SCHIFF. Certainly.

Mr. TERRY. The doctors who have turned into assassins want to still be respected in the community. They don't want people picketing at their golf club, for example, saying, you know, don't hit the club with Dr. So-and-So, he might have used that hand to kill a child this morning. They hate that. It is speech.

We want to know where he plays golf, we want to embarrass him, and if he were really committed to what he was doing, he wouldn't be embarrassed. They do these kinds of things to me constantly. When I was in Florida a week and a half ago, the police came, they said there is a man who said he is coming over with a hand grenade to blow up in this building, in this church. It goes with the turf, but I didn't blink and I didn't back down.

I am not ashamed and they can put my name on all the things they want. They can come to where I play golf and they can mock me until the day I die, and all it does is strengthen my resolve because I know I am right. And if they feel that way, then they shouldn't be intimidated by the fact that they are being exposed in the community. They should be happy that they murdered the innocent for money.

Mr. SCHIFF. Well, let me follow that a moment because that is not civil—you are describing civil disobedience in a clinic and I want to go past the clinic which you are now talking about.

Mr. TERRY. Exactly.

Mr. SCHIFF. Is there no concern that there might be a right to privacy around, let's say, one's home that might prevent picketing and demonstrating, which is otherwise peaceful and lawful for any

reason or cause or do you believe that the right to picket and protest goes to a person's home area?

Mr. TERRY. Mr. Schiff, if we begin to sever first amendment freedom slowly but surely, it will all be crushed. I mean, I don't like it when certain things happen to me that involve first amendment activities of other people. I remember a sign once, I was in L.A., and there was a sign mocking my mother. I had rage well up inside of me because I love my mom.

But you know what? I didn't do anything because that was his first amendment right to do it, and we can't have it both ways. If someone can follow George Bush from city to city to city with a chicken suit on and if they can say that Jerry Falwell is having incest with his mother in an outhouse, we can't have it both ways. Either the first amendment is for everybody or it is for nobody, and I dread the stalking law.

Even though I don't do it, and I don't encourage people to do it and I don't think it is good, I think that the stalking law is going to be twisted and used to hammer people concerning speech. If you take away a right to picket in a residential neighborhood, then those people who for years have been outside of the President's mansion protesting nuclear war or nuclear arms, then their right gets taken away.

Mr. SCHIFF. Mr. Chairman, may I have just 1 extra minute. I just want to add something because I gave most of my time to the witnesses. I thought that was appropriate.

Mr. TERRY. Thank you, Mr. Schiff.

Mr. SCHIFF. I think, Mr. Chairman, that first of all, the Congress can select an area that it believes deserves extra protection. I do not believe that is unconstitutional or inappropriate. Second of all, I am convinced that even though there have been the arrests of Operation Rescue in some areas, that there are weaknesses in enforcing the law in other areas so that I am convinced once again, and am still convinced, that your bill is moving in the right direction.

The one thing that has arisen in the testimony we have heard that has given me concern from another direction is what we are trying to do is eliminate violent behavior and illegal behavior that is not enforced surrounding the issue of abortion, and I think that goes both ways.

I think that those engaging in peaceful civil disobedience are not immune from arrest—Rosa Parks was arrested—but they should be immune from violence. If there is a need in the statute, if we pass it, to make it broader so that everyone is protected in the exercise of the liberties, I would support that.

Thank you, Mr. Chairman. I yield back.

Mr. WHITE. Mr. Schiff, the only disagreement I would have is Rosa Parks shouldn't have gotten 5 years or a felony for sitting at the cafe, that is where we differ.

Mr. SCHUMER. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

As I understand the four witnesses, your testimony is that your organizations are not doing anything wrong, you intend to continue to do what you are doing. If there is anything that has been done wrong, it has been done by both sides, and that if your organiza-

tions or any individual connected with your organizations has done anything wrong, that is an aberration. That is correct?

Reverend FOREMAN. That is correct.

Mr. TERRY. That is true.

Mr. EDWARDS. That is your testimony.

Now, Reverend Foreman, in your oral testimony you said near the end that, in the event we pass this law, it might very well or you really predicted that it could excite the extremists and we might have more violence; is that right?

Reverend FOREMAN. The crushing of the middle of the road dissent, and what we are is middle of the road. Martin Luther King was considered wild-eyed until Stokely Carmichael said burn down Atlanta, then all of a sudden he seemed very, very sane.

When Watts burned down, Dr. King became even saner because they realized how restrained it was that he was doing. All I am saying is, history has proven that where you crush the moderate dissent by creating a whole media campaign to paint people as being violent when they aren't, and you define violence as sitting in front of a door—

Mr. EDWARDS. You don't think what you said is a threat?

Reverend FOREMAN. No, it is not a threat. I am simply making a historical point.

Mr. EDWARDS. Well, certainly when you bring up Gandhi or King or anything else, you don't—when the laws were enforced that didn't create more violence in the Ku Klux Klan, it cooled it off, it stopped practically all of the violence when the local people and the Federal people did their job. So your prediction doesn't really hold water, historically.

Reverend FOREMAN. King was accused on a regular basis of being violent, of promoting riots and so forth. Rather than crushing King, he actually became the leader of what has now come to be recognized as the moderate, middle of the road approach. The NAACP was mild and then you had the Stokely Carmichaels and the Malcolm Xs who were wild, but King was in the middle.

All I am saying is we are the middle of the road dissent. If you crush that out—had you succeeded in crushing King, you would have seen a lot more than Watts go up in smoke.

Mr. SCHUMER. Will the gentleman yield?

Mr. EDWARDS. Yes, I yield.

Mr. SCHUMER. According to the testimony of all three of you, you don't engage in any of the acts that we are exploring.

Reverend FOREMAN. Nor do we advocate it.

Mr. SCHUMER. I understand that. Just assuming you are correct here, then you should be all for—we are not trying to crush your things, no one has said a word about these things. That bill doesn't do it. We are trying in this hearing to deal with the series of examples I brought up to you before.

Each of you has said your organization doesn't do it and you think, while it might be protected by the first amendment, it is wrong. That is what we are trying to do here. So you are setting up a straw man.

Mr. WHITE. Does it prevent the blocking of abortion clinics and does it make it a Federal offense? That is my question.

Mr. SCHUMER. The blockading, using obstruction, yes; nonviolent picketing, no.

Mr. WHITE. Nonviolently blocking the abortion clinic, that is a Federal—

Mr. SCHUMER. That is correct. That is what the bill is intended to do.

Mr. WHITE. That is intended to crush the movement.

Mr. SCHUMER. What we are exploring at the hearing today, as was mentioned, are things that go beyond the clinic. I gave you a series of examples, and what I think Mr. Edwards is saying—and I see that Reverend Foreman is directing himself at this legislation—but what I and most of us here have been talking about is, if you consider yourselves middle of the road, people who are further over than you and do things that you don't support.

Mr. TERRY. Mr. Edwards, may I respond also to the question?

Mr. EDWARDS. I didn't understand what you said.

Mr. TERRY. Mr. Edwards, may I respond to the question about whether or not there is a threatening element?

Mr. EDWARDS. Well, it was Reverend Foreman who I saw an implication of a threat that, if you pass the law, people in our organization or affiliated—

Reverend FOREMAN. No, I specifically said the extremists out there who are not a part of us who are waiting to see if we will have what it takes to stand.

Mr. TERRY. May I comment?

Mr. EDWARDS. I will have a question of you in just a moment. Let me ask this question of Mr. White. You said just a few minutes ago that you love the Constitution.

Mr. WHITE. That is correct.

Mr. EDWARDS. Right. Is that all of the Constitution?

Mr. WHITE. Absolutely.

Mr. EDWARDS. Or just selected portions? What about the constitutional right of privacy?

Mr. WHITE. I love the right to privacy.

Mr. EDWARDS. But it doesn't extend to a woman's right to choose as the Supreme Court has enunciated?

Mr. WHITE. I understand that there is a court ruling that says that, but I also know scientifically that there are children who are dying, and so I am at conflict with this Court interpretation. I am not in conflict with the Constitution. I believe eventually it will be shown to be bad decision, Lord willing. So, in the meantime I must civilly disobey that.

Mr. EDWARDS. Well, Mr. Terry said, "I know I am right, I know I am right." Now how do you know you are right?

Mr. TERRY. Because the eternal law of God that He gave to Moses said: Thou shalt not murder, and wicked men throughout—

Mr. EDWARDS. God told you you are right?

Mr. TERRY. No, Exodus, chapter 20, sir.

Mr. WHITE. Science. If I were not a Christian, if I were a heathen, I would see it the same way because science will prove it.

Mr. EDWARDS. I asked Mr. Terry, he said I know I am right, and he just told me that Moses said he was right. Now, did God tell you you are right, Mr. Terry?

Mr. WHITE. You are trying to mock Mr. Terry, and the truth of the matter is men throughout history——

Mr. EDWARDS. No, I am not. I am asking him a question. He said he knows he is right.

Mr. TERRY. That is correct, sir. I know that murder is wrong.

Mr. EDWARDS. I am asking why he knows he is right, and he said Moses is involved.

Mr. TERRY. God—sir, I am sorry, let me explain to you very clearly. God will hold you and every member of this council accountable for the bloodshed that you are promoting. His law is eternal. You may get away with it until the day you die, but this Nation will pay the price for the bloodshed and you, sir, will also stand before a holy God for your part in the shedding of innocent blood.

Mr. EDWARDS. Well, my religion tells me a completely different story, and I might add that most of the great religions of the world would disagree with you. As to when there is a person has been disputed for hundreds of years. The civil law has never recognized that.

A couple of religions have said differently that life begins at conception, but it is a minority view throughout the world, and I am sure——

Mr. WHITE. Science doesn't disagree.

Mr. TERRY. With all due respect, sir——

Mr. EDWARDS. Please, I am talking to Mr. Terry.

Mr. WHITE. Excuse me, I am sorry.

Mr. TERRY. With all due respect, sir, I am a Bible college student. My training is not in constitutional law as yours is, my training is in the Bible and the religions of the world and church history, and you are dead wrong. Western civilization has held abortion to be repugnant.

Mr. EDWARDS. I am talking about Muslims. I am talking about Jews. I am talking about——

Mr. TERRY. Orthodox Jews hold abortion to be murder. Muslims and Orthodox Jews hold abortion to be murder. This is the first century in the history of Judaism where anyone has countenanced abortion except to save the life of the mother.

Mr. EDWARDS. Mr. Terry, what is the budget of Operation Rescue?

Mr. TERRY. The budget of Operation Rescue? What in the world does that have to do with this legislation, sir?

Mr. EDWARDS. Pardon?

Mr. TERRY. What in the world does that have to do with this legislation?

Mr. EDWARDS. Because there have been by some of the witnesses an allegation that perhaps there is a conspiracy here.

Mr. TERRY. Oh, no, there is no conspiracy. The woman who talked about being able to not have a job and to move from place to place?

Mr. EDWARDS. You refuse to answer that question?

Mr. TERRY. No, I don't refuse to answer it. I have no idea what Operation Rescue as a movement——

Mr. EDWARDS. Who contributes to it? Where do you——

Mr. TERRY. Mr. Edwards, I am surprised you have even heard of NAACP. This is the witch-hunt that I am talking about. You have no right to know who gives money to a prolife organization and you know you have no right to know. This is the type of intimidation you want to use to crush.

You know what this is akin to? This is akin to the Fugitive Slave Act. That law nearly tore the country in two and helped bring about the speed of the Civil War.

Mr. EDWARDS. Well, thank you for the history lesson, I appreciate that.

Mr. TERRY. Glad to give it.

Mr. EDWARDS. Well, let the record show that Mr. Terry declines to answer, and that is certainly—

Mr. TERRY. I can only tell you what groups I am involved in. Do you know how many Operation Rescue groups there are? I have no idea what they take in, none. I know this, it doesn't even account for a drop in the bucket compared to Planned Parenthood and NARAL and the NOW who are represented here in the room.

Mr. WHITE. Mr. Edwards, I make \$45,000 a year, \$18,000 in parsonage allowance and the balance in salary, and I pay my taxes. Any other questions?

Mr. EDWARDS. No, thank you very much.

Mr. SCHIFF. Will the gentleman from California yield for one question with the Chair's brief permission?

Gentlemen, you have made the focus of your testimony in great part, if this bill passes as it is now written, it will crush your movement, which you have described.

Mr. TERRY. That is the intent of this legislation.

Mr. SCHIFF. But that portion of the movement which deals with civil disobedience—and I understand the history of the civil disobedience, I think we all do in this room—still recognizes that it is illegal at the time, and therefore, if you are engaging in civil disobedience, you are expecting law enforcement to act.

How could additional assurance that law enforcement will act to enforce the existing laws crush your movement?

Mr. TERRY. All right, let me explain. Take it out of this realm. Go to Rosa Parks. Should Rosa Parks have been arrested? I think you and I would both say no. Under the current law, we would have to acquiesce and say well, yes, if that law was going to be upheld.

The question is begged, should she have been sentenced under a Federal law to 12 months in jail for the first offense, 3 years in jail for the second offense? That is our concern, sir.

Frankly, I am very disappointed in the order of events. We should have been talked to before the committee referred this, the subcommittee referred it to the full committee. Why are we here? We are here to talk about violence today, but why weren't we given the opportunity to express our hearts to this body before the legislation?

Mr. SCHIFF. I yield back.

Mr. SCHUMER. The record will show there was a hearing where Reverend Tucci gave views according to him representing Operation Rescue before this bill was drafted. That was last year.

Mr. GLICKMAN. Would the gentleman yield also?

Mr. SCHIFF. The chairman has the floor.

Mr. GLICKMAN. Would Mr. Schumer yield?

Mr. SCHIFF. Just one second. As did the lawyer from Operation Rescue testify. What was his name? Jay Sekulow.

Mr. TERRY. I meant in the past week because it was voted on in the past week.

Mr. GLICKMAN. If the gentleman would yield, let me just tell you, I view this as an important part of the process—the markup and the hearing. The fact of the matter is that the subcommittee action is a very preliminary first step, and then you have the full committee hearing, which is a more significant second step, and this is not unusual. This has happened before.

The fact that you are here testifying means that we want to hear—if you don't notice——

Mr. TERRY. I am thankful to be here. Thank you.

Mr. GLICKMAN. You have a pretty good attendance of people, you know, a majority, which probably don't agree with everything you are saying, but we are listening because we think you have something to say.

Mr. TERRY. Thank you. May I make two quick comments? Number one, I would suggest, A, that it be tabled completely for this reason: Currently we are facing an avalanche of cocaine distribution and sales, true mobster activity in the sense of the Mafia. We are experiencing incredible credit card fraud, incredible mail fraud, carjackings, gang warfare.

For the Attorney General to make as her first PR move that she wants to crush us when we are facing all of this as a culture is a real betrayal of justice and priority, number one.

Number two, if you are determined to have a law, make it a Federal misdemeanor, make it on a par with other acts of trespassing or civil disobedience so that it is a 6-week jail term or——

Mr. SCHUMER. Mr. Terry, the first offense is a misdemeanor under this law.

Mr. TERRY. But it is up to a year in jail, and then it jumps to a felony.

Mr. SCHUMER. That is a misdemeanor.

Mr. TERRY. Well, in some States it is a 3-month misdemeanor.

Mr. SCHUMER. This is the Federal Government.

Mr. TERRY. Now we know where State rights came from. Thank you.

Mr. SCHUMER. OK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. I would just like the record to show that the bill that we had the hearing on last year was a different bill.

Mr. TERRY. That is correct.

Mr. SENSENBRENNER. Which was drafted entirely differently, and while I am not here to debate who was represented or whose viewpoints Mr. Tucci and Mr. Sekulow represented, the constitutional issue is entirely different, particularly as a result of the Supreme Court's decision in *R.A.V. v. the City of St. Paul*, which was handed down subsequent to the hearing that was in question.

The concern that I have, and I would like the witnesses to at least briefly address it, so we can get to panel number three, is really twofold. One, the Supreme Court in 1972, in the case of *Police Department v. Mosley*, said that any attempt to prohibit peace-

ful picketing on the content—specific basis was unconstitutional, and that involved a Chicago City ordinance that prohibited picketing of schools except where labor management disputes were involved.

So it was OK for the teachers' union to picket the school because of a dispute they had with the school board over wages and conditions of employment, but it was not OK for anybody else to picket the school for any other purpose. And there the Supreme Court said that the Government has no power to restrict expression because of its message, its ideas, its subject matter or its content.

The bill that we have before us now does intend to prohibit expression on one side of one particular issue, and I am very concerned that that really runs afoul of the first amendment.

The second case is a 1982 Supreme Court decision in the case of *NAACP v. Claiborne Hardware*, and this was not unlike the fact situation that is before us with the abortion clinic protests. There the NAACP organized a boycott against white merchants in Claiborne County, MS, and there was violence that was attendant to this boycott.

There was an attempt to try to throw the whole thing out, including the peaceful protest. The Supreme Court said that the Government had to be very precise in going after the violent acts so as not to squelch the first amendment rights of the people who were not breaking the law but who wished to organize a boycott against certain people who were not in sympathy with the civil rights movement.

Now, what I hear you telling us is that you are trying to organize boycotts against doctors who perform abortions. And, I am wondering if you could tell us briefly now, how you are the same or how you are different from what the Supreme Court already decided 11 years ago.

Mr. TERRY. Very briefly, I am obviously not a constitutional lawyer, but I think that all of us in this room would agree on the boycott question that we have the right to expose what these abortionists are doing and to call on people to boycott their services. We have been very successful.

In my community when I first became a prolife activist, there were 21 Ob/Gyns. Ten of them did abortions. After 1 year of a public relations campaign to simply say who did and who did not do abortions, 10 of them of their own volition, without any signature or threats or anything, just said I am quitting.

That is our right to do that, just like the black civil rights activists were able to break the back of segregation and unjust business practices of white business owners in the South were able to do it through boycott.

To your first one about the content base issue, I would suggest making this law as an amendment, put on a section saying that people who sit-in at churches, because the homosexual movement has had a very strong recent wave of activity where they are doing sit-ins at churches, and then see if this bill makes it.

Mr. SENSENBRENNER. Thank you.

Mr. WHITE. If I may in response to your question, the other item is the police departments. I know from Wichita, good policemen who did their very best to enforce the law and judges who did their

very best to put us in jail and did put us in jail, and I think maybe this committee would do well to hear from those police departments and what they are really experiencing in terms of violence out there because I talk to them all over this Nation.

I am a national police liaison, and I will tell you this, the police departments recognize that we are not the violent ones, and I can bring in dozens of all the major cities in this country, I can bring in police chiefs or commanders who will emphasize that to you. We are not the violent ones. I think that would be something worth investigating.

Mr. SCHUMER. Thank you. I want to thank the panel for their patience. I would just make two points quickly. Mosley, of course, applies to picketing. This law applies to blockading, obstructing. That is why it is constitutionally quite different. *Claiborne Hardware*, we believe the legislation meets the confines of *Claiborne Hardware*.

What I would simply say to Mr. Terry is that if—I would draw this analogy: If homosexuals or anyone else believe that someone didn't have a right to go to a certain church and had continuous blockades in front of that church and whenever that church moved, there were blockades so that people who believed in that religion couldn't get inside, I would introduce that bill tomorrow.

Mr. TERRY. Well, do it, in New York for Cardinal O'Connor's sake.

Mr. SCHUMER. That is a different issue. No one is prohibited from entering St. Patrick's Cathedral.

Mr. TERRY. I am sure Cardinal O'Connor would disagree.

Mr. SCHUMER. I want to thank the panel for their patience and for engaging in this dialog. It is going to help us move along in whatever direction we see.

Thank you. We have one more panel.

Mr. SCHUMER. Our final panel this morning consists of two attorneys who are widely known for their work in the abortion issues. John E. Cowles is the attorney for Women's Health Care Services in Wichita, KS. He is perhaps best known for his work in a Federal injunction action during clinic protests in Wichita 2 years ago.

The case, *Women's Health Care Services, et al. v. Operation Rescue* is currently on appeal. Mr. Cowles is also a former assistant district attorney in Wichita.

Our second panelist is attorney Walter Weber, counsel to the American Center for Law and Justice. Mr. Weber specializes in constitutional law and has represented numerous antiabortion protesters and groups, including Operation Rescue. He was legal counsel for protesters in the 1988 Supreme Court case, *Frisby v. Schultz*.

I want to thank both of you for being here this morning. Your prepared statements have been received and will be entered without objection in the record. We will first hear from Mr. Cowles, then Mr. Weber.

Mr. Cowles, will you please begin.

Mr. GLICKMAN. Mr. Chairman, would you yield for just 1 second?

Mr. SCHUMER. I would be happy to yield to Mr. Glickman.

Mr. GLICKMAN. I want to welcome a constituent of mine, Mr. Cowles, appreciate your being here.

Mr. COWLES. Thank you, Mr. Glickman.
Mr. SCHUMER. Thank you.

STATEMENT OF JOHN E. COWLES, ATTORNEY, McDONALD, TINKER, SKAER, QUINN & HERRINGTON, P.A., WICHITA, KS

Mr. COWLES. Thank you, Mr. Chairman, and distinguished members of the committee.

I appreciate the invitation to appear here today to give background information regarding the protests in Wichita, KS, and a legal action that I am familiar with, having represented one of the three clinics in Wichita in an injunction action against Operation Rescue.

Three of the panel members that just appeared were in Wichita during those protests—Mr. Terry, Mr. Foreman, and Mr. Jeff White. The protests in Wichita did not look much like the tape that was played by Mr. White. The last time I saw Mr. White, he was being pulled out from underneath the automobile of a physician trying to get in his own driveway at Women's Health Care Services in Wichita.

Mr. White was arrested by Federal marshals under the injunction that we had that had been approved by Judge Patrick Kelly in that case, and as the chairman mentioned, that case is now on appeal in the tenth circuit.

The issue in the case at the tenth circuit now is whether or not our injunction action has any jurisdictional basis following the *Bray v. Alexandria Women's Health Clinic* case from the Supreme Court that I am sure you are familiar with. That case casts grave doubt about the ability to get an injunction against Operation Rescue under the jurisdictional basis of the Ku Klux Klan Act, a title 42, section 1985 statute.

Therefore, we very much support the creation of a Federal cause of action so that clinics can get jurisdiction in Federal court to get injunctions against people that would blockade clinics.

In listening to the remarks today from the previous panels, I would urge the members not to get too involved in the specifics of what that injunction would entail, not to try to draft the injunction itself within the Federal legislation, but just give jurisdiction to Federal courts to issue the injunction.

Federal courts are capable of balancing free speech rights against the rights of the clinics to remain open and the rights of women to go to the clinics that they choose. That is what happened in our case. The free speech rights of Operation Rescue were protected by the Federal court, they were allowed to picket, they were not allowed to cross lines and get into the driveway and blockade. That was a change from the policy of the Wichita Police Department.

In listening to your remarks, Mr. Glickman, I assure you that it wasn't the situation of the police department not being ready for Operation Rescue. We knew that they were coming for months, but the mayor and the city manager of Wichita ordered police officials not to prohibit the blockades from forming and ordered them not to immediately arrest any protester, but to let them be arrested one at a time and baby step out of the driveway.

That process, with hundreds of protesters in the driveway, meant that the clinics were closed down all day long as the sort of ridicu-

lous episode of one police officer carefully baby stepping a protester away took place all day long.

That is why we went to Federal court to get an injunction to say we think that driveway should be kept clear. That is what our injunction said. It allowed for what are called sidewalk counselors, in other words, they could have people at the sides of the driveway to say, you know, if you want to look at this literature about your decision to have an abortion, you are welcome to.

As a practical matter, that ended by being people who would scream obscenities at the patients as they passed through but, in any case, those free speech rights were preserved. But the right of women to get in and out of the clinic and the physicians and his staff were also preserved, and those are very easily balanced. They were balanced in our case in Wichita.

We think it is important to have Federal court jurisdiction to continue to have these kinds of injunctions because it is not a reliable method of protecting access when you leave it up to the local political process. We had a prolife mayor and a prolife city manager that would not let the policemen do their job, and the police department didn't like that, but there was nothing they could do about it.

There were some arrests for State court trespassing that went to State district court where our judges are elected, and in one of those cases, that is up on appeal now to the Kansas Supreme Court. An elected State court district judge held that the so-called necessity defense applied, that the protester had to be acquitted because the act of trespassing and blockading the clinic was not as great a harm as what was happening inside the clinic, even though abortion is legal and constitutionally protected. So there are the pitfalls in the system if there is no Federal court option.

We think it is very important to have that option, and we support this legislation, and we believe that if jurisdiction is granted to Federal courts, they can craft the injunction to protect free speech rights while prohibiting anyone from blockading the clinic so that patients can come and go and so doctors can come and go.

Thank you very much.

Mr. SCHUMER. Thank you, Mr. Cowles.

[The prepared statement of Mr. Cowles follows:]

PREPARED STATEMENT OF TESTIMONY

By: John E. Cowles

McDonald, Tinker, Skaer, Quinn & Herrington, P.A.

Wichita, Kansas

Mr. Chairman, Members of the Subcommittee:

Thank you for this opportunity to testify in support of federal legislation regarding freedom of access to clinics.

In my testimony, I would like to provide you some background regarding the clinic blockades and other tactics used by Operation Rescue and other groups during and since the 1991 "Summer of Mercy" campaign in Wichita, Kansas.

You have probably seen film footage of the driveway to Women's Health Care Services in the national media many times as a mob of protestors crowded against the gate to prevent patients from passing through. For many years, local groups had peacefully picketed on clinic sidewalks, but in the Summer of 1991, Operation Rescue ordered its followers to link arms and sit in the driveway to obstruct entry by patients. Wichita police calmly watched the protestors arrive by the bus load, walk to the driveway and form the blockade. No arrests were made until a patient vehicle arrived. Then, as other protestors flooded into the street to throw themselves on or under the patient's car, the police would ask the protestors in the driveway to leave. When they refused, an arrest would finally commence, one protestor at a time, "baby-stepping" away from the driveway. If police tried to make them move faster or arrest more than one at a time, the protestors would

be ordered by Operation Rescue to go limp, requiring several officers to carry each one away.

This choreography was the result of earlier meetings between Operation Rescue leadership and the Wichita mayor and city manager. The city manager would not allow police to establish lines on either side of the driveway to prevent the blockades from forming, and police officers were forbidden to make immediate arrests.

We filed an action in federal court and received a temporary restraining order the same day. When the TRO was served on Randall Terry on the clinic driveway, he threw it to the ground. He told the assembled crowd to ignore the federal injunction. He told his followers that injunctions were to be used as toilet paper and that the marshals could send the injunctions to hell along with the judge that had signed it. He called the federal judge a "nazi," and Operation Rescue leaders later distributed both the office and home telephone numbers of Chief Judge Patriok Kelly, who had signed the order. They persuaded Bishop Eugene Gerber of Wichita to publicly rebuke Judge Kelly, a practicing Catholic. Later, Judge Kelly and his wife were confronted by a protestor while they were returning to their home from an early morning walk. Judge Kelly fended off the protestor while his wife ran to the house to call police.

Judge Kelly called a meeting in his chambers where he implored the mayor and city manager to authorize city police to protect access to the clinics by enforcing municipal trespass ordinances. They refused. Meanwhile, the blockades prevented access to the

clinic for an entire week, and the leaders announced they had decided to stay the entire summer. The Governor of Kansas accepted an invitation to attend an Operation Rescue rally, where she encouraged their efforts. The telephone campaign against Judge Kelly became more ominous when death threats were received. Two federal marshals were assigned to put Judge Kelly under constant protection and new security devices were added to his chambers. The threat to Judge Kelly and his family did not deter him from continuing the enforcement of the injunction.

I do not intend to have this matter continue in the course of personal threats, intimidation personally and for my family. That is ongoing, my friend, and you tell the Tenth Circuit if they want to keep this in place, they should bear that in mind. And I'm sick of it. I will not have it. I will not have my family in danger, and we are sick of it. And for me to stay [the injunction] is simply to license mayhem in this town. It's an absurdity. It would authorize your law-breaking clients to persist.

Remarks of Judge Kelly, Hearing on Motion to Stay, p. 7, August 6, 1991.

Harassment of Physicians

Since the Summer of 1991, the most intense harassment efforts by protestors have been directed against physicians who perform abortions. In addition to telephoned death threats and bomb threats to the clinics, protestors have invaded two of the three Wichita clinics, spray painted buildings, thrown stink bombs at ventilation units, glued locks, chained gates, turned off utilities, knocked down fences, and pitched thousands of tiny nails or tacks into the driveways and parking lots of the clinics. When

a physician leaves, he or she is often followed and protestors swerve their automobiles or stop suddenly trying to create an accident or force the physician off the road. One physician wears a bullet-proof vest and has purchased a trained guard dog to accompany him around the clock. For several days, protestors camped out across the street from one physician's residence, shooting off fireworks through the night, shining lights at the residence and using a bullhorn to broadcast obscenities. Protestors followed physicians to church and disrupted services on two occasions. Protestors stalked physicians in the residency program at Wesley Hospital in Wichita, and followed them to their homes, where they distributed literature to their neighbors. Protestors called for a boycott of Wesley Hospital unless the residency program prohibited physicians from performing abortions, and posted flyers with the pictures of the resident physicians. Examples of such literature are attached. Protestors tried to blockade a physician's home, and when he slowly drove through the crowd, protestors fell down screaming, claiming they had been "run over." Protestors even engaged in telephone campaigns targeted against the parents of physicians in the residency program.

Harassment of Patients

Primarily, patients were besieged at the gates of the clinic, where protestors swarmed the patient's car to stop it, then they pounded on the windows, screamed at the patient and sometimes attempted to photograph her. But then, license tag numbers were

taken down and addresses obtained so that the harassment could continue after the patient left the clinic. Literature to harass the patient would be mailed even after she had her procedure. When leaving, patients were often followed to a hotel where many patients stayed. Protestors would put flyers under the doors of all the hotel rooms, claiming that abortions were being performed at the hotel and the guests should complain to the manager. A copy of this flyer is attached. Through license tags, hotel rooms, or other means, protestors sometimes learned the names of patients and their telephone numbers. In those cases, telephone harassment commenced day and night, and the patients' names were placed on large picket signs at the clinic when protestors believed patients would be returning for a procedure.

How Clinic Access Was Regained in Wichita

When local police and politicians could not, and would not, protect access to clinics, Judge Kelly ordered United States Marshals (about 40 men at the height of the protest) to enforce the injunction and maintain access to the clinics. Incredibly, the day after the preliminary injunction was granted, the Department of Justice filed an *amicus curiae* brief in support of Operation Rescue and attempted to thwart Judge Kelly's orders to the marshals. Judge Kelly prevailed, however, and the marshals arrived to protect access to the clinic for the first time in two weeks.

We filed for an injunction in federal court rather than state court because our state court judges are elected and because

Wichita police would have had to enforce the state court injunction in conflict with their superiors at city hall. Our federal injunction was able to cover both the clinic in Sedgwick County and the physician's home in neighboring Butler County, whereas venue requirements would have required two state court actions to protect both locations. We never doubted our decision to file in federal court. Later, one of the protestors who picketed the federal courthouse carried a sign that said: "Don't re-elect Judge Kelly." This symbolized the appropriateness of the federal forum.

Federal marshals promptly arrested protest leaders and brought them before Judge Kelly on contempt charges for violating the injunction. Most of the leaders admitted that they had no intention of obeying the terms of the injunction and remained in custody. Later, they promised to obey the injunction, but immediately after release, they began blockading again. Many protestors were arrested several times.

Meanwhile, in state court one protestor charged with criminal trespass brought in out-of-town lawyers to argue the "necessity" defense -- that the trespass was justified because her intent was to stop abortions, which are a "greater harm" than criminal trespass. Although this defense had been roundly rejected in abortion trespass cases in other states, the state court judge in Wichita allowed the defense and acquitted the protestor. The prosecutor's appeal from that decision is now pending as, *City of Wichita v. Tilson*, No. 92-68575-S (Kan. Sup. Ct.).

We continue to believe that the only reliable sanctuary where

citizens can safeguard the exercise of federal constitutional rights is in federal court, away from the political influences on elected state court judges and where enforcement is assured through federal marshals who do not have to answer to local politicians. A founding principle of federal courts was to assure an independent judiciary above the fray of local political controversies. The turmoil in Wichita was a classic example of the need for federal court jurisdiction to protect the exercise of constitutionally protected activity. In our view, it is not only constitutionally acceptable, but constitutionally required that Congress provide a federal cause of action to protect the exercise of constitutional rights. Where groups such as Operation Rescue claim to be above the law, Congress must assure that the victims of Operation Rescue tactics are protected by the law. In another context, the Supreme Court stated:

[I]n the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion. This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and carry their battle to the streets. One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.

Walker v. City of Birmingham, 388 U.S. 307, 320-1 (1967).

The scope of injunctive relief should include prohibition of harassment and intimidation tactics both at the clinics and wherever protestors seek to apply pressure to prevent physicians

and patients from the exercise constitutionally protected rights. The Reconstruction Era civil rights statutes were designed to broadly cover anyone conspiring "for the purpose of depriving, directly or indirectly" constitutionally protected rights of others. 42 U.S.C. § 1985(3). This legislation was in response to the intimidating and violent tactics of the Ku Klux Klan members who were not being adequately challenged by local and state law enforcement.

[T]he local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. Immunity is given to crime, and the records of public tribunals are searched in vain for any evidence of effective redress.

Cong. Globe, 42 Cong., 1st Sess., 374 (1871) (Remarks of Rep. Lowe).

The constitutionality of Section 1985(3) as applied to the KKK has never been seriously questioned. Following the *Bray v. Alexandria Women's Health Center* decision, it is now imperative for Congress to create parallel legislation to protect the rights of women entitled to exercise their constitutional right to abortion.

Legislation to curb clinic violence and off-premises harassment and intimidation should be constitutionally sound as against the predictable claim that protestors' first amendment speech rights would be violated. The Supreme Court has held that:

First Amendment rights may not be used as the means or the pretext for achieving "substantive evils" which the legislature has the power to control.

California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508,

516 (1972).

Stated another way:

[I]t has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. . . . Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.

Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1948).

CONCLUSION

We believe federal legislation is necessary to provide criminal and civil remedies to combat the nationwide conspiracy to harass, intimidate, threaten, and do violence to physicians and patients exercising constitutionally protected abortion rights.

You Can Save Human Lives!!!

Be sure to keep your ears and eyes open while staying at the Williamsburg Hotel, for you may be able to help women and children at their hour of need. Doctor George Tiller, Wichita's infamous late-term abortionist, uses this Motel as a clinic. Tiller has an "arrangement" with your hosts, Williamsburg owners Art Bailey and Pete Rockwell. Under the terms of this agreement Tiller (the serial killer) uses the Williamsburg as an abortion clinic, delivering dead (or almost dead) babies in the rooms rented to deceived women.

Statistically speaking, it is highly likely that a dead child has been delivered in the bed you are sleeping in while staying at the Williamsburg Inn. Calm nights have been punctuated by the screams of women coming face-to-face with their dead children, as well as the wail of ambulances when "complications" (such as an accidental live birth) arise. Beyond this, the Christian community of Wichita will soon begin massive picketing of this Murder Motel, toward the goal of driving the evil of childkilling from the city of Wichita. By paying your bill you are helping to support George Tiller, Pete Rockwell and Art Bailey in their grisly merchandising of human life.

We are asking you, for your own peace and safety, to leave this horrifying palace of death and not return. George Tiller "feeds" demonic hosts with his business of human sacrifice. If any hotel in Wichita is haunted it certainly must be this one! Literally hundreds, if not thousands, of dead children have been carried in, and carried out, of this haunt of jackals. If Satan does exist (and he does) then The Williamsburg Hotel must be his hotel of choice while traveling through Wichita!

Please join us in our stand against Tiller and the murder of babies that could easily live outside of their mother's womb! Please join us in standing for what is right and true. Please consider letting the management of this hotel know your feelings about what they allow to go on behind the closed doors of this establishment.

For more information regarding what you can do to stand against childkilling and its' agents call 684-5108 and ask for George, or contact us at 265-4349. Thank you for your concern for the women and children. The International Task Force for the Protection of Earth's Mother's and Children, Amy Meyer-Canterbury, chairwoman.

***I Pledge To Pray For The Repentance Of HCA Wesley,
and to Boycott HCA Wesley Until Said Repentance.***

Zip

[illegible]

Leaflet distributed by Wichita Rescue/Operation Rescue picketers at V. Jane Gilchrist's home on October 16, 1991.

"But you, dear friends, build yourselves up in the most Holy Faith and pray in the Holy Spirit...be merciful to those who doubt; snatch others from the fire and save them; to others show mercy, mixed with fear...[lest you too fall away from the Living God]." - St. Jude

Please Join With Us in Prayer for V. Jane Gilcrest

Ms. Gilcrest is your neighbor (342 North Roosevelt) and spokesperson for The Voices for Choice, one of Wichita's leading pro-abortion front organizations. As the executive director of the YWCA in Wichita Jane stands out as a vicious enemy of the unborn children in our city. She is well known for her aggressive leadership in the ultra-leftist charge to keep childkilling legal--for any reason, at any time in the pregnancy, for any baby regardless of what the father, grandparents, or would be adoptive parents want. We are in the streets tonight to pray for Jane, and to warn her that the Creator certainly does not share her pro-abortion views, and will one day in the future judge those who aided and abetted the childkilling industry in Wichita.

Jane Gilcrest has purposely and deliberately aligned our local YWCA with such radical leftist groups as the National Organization of Women (N.O.W.), Planned Parenthood and the "greens"--The Daughters of Mother Earth, ECO Feminist Group. These local atheistic groups openly support George Tiller's "right" to kill viable seven to nine month old babies for comfort and profit. On a national level, the YWCA's stated public policy is to oppose any laws which "restrict or prohibit abortions" and support "public funding for abortions." Not only is Jane Gilcrest and her YWCA pro-abortion, but they actually want you, the taxpayer, to foot the bill for Tiller's murders! We must come together now to confront this great evil. If we do not they will further pursue their godless agenda for a new social order, including forced abortions for large families, "homosexual rights", New Age education in the elementary schools, drug legalization and the persecution of Christians who stand up against the rising tide of paganism in our nation.

We are very concerned for both Jane Gilcrest and the YWCA. Our ancestors here in Wichita who built the Young Woman's Christian Association to aid troubled girls must indeed be turning over in their graves at the thought of these resources being used to further childkilling at Tiller's mill and the advancing the 'New Age' religious agenda. We must, as the people of Wichita, take this 'falling away' very seriously, and make the sacrifices needed now to keep people like George Tiller, Molly Yard, Ted Kennedy and Jane Gilcrest from controlling our economic future--as they now control and end the futures for thousands of unborn children in America.

Will you, as Jane's neighbor, please join with us in praying that her eyes are opened to the reality of abortion. Pray with us that Jane's spirit is awakened of the evil she is advancing against innocent children. Pray with us that Jane is moved in her soul to compassion for the deceived women that Wichita's abortion industry is selling death to.

Please join with us in praying specifically that God reveals to Jane the truth concerning His Love for all life. Pray specifically that God would speak to Jane in her dreams, as He moved on Pilate's wife, to warn her of the judgement that awaits those who help in the shedding of innocent human blood. Join us in praying that through these dreams Jane comes to understand our Heavenly Father and bows before Him in repentance. Please join us in praying that Jane is "snatched from the fire", to stand with us for the cause of God, Country and the Children.

"Woe to him who builds his realm by unjust gain to set his nest on high, to escape the clutches of ruin! You have plotted the ruin of many peoples, shaming your own home and forfeiting your life. The stones of the wall will cry out, and the beams of the woodwork will echo in. Woe to him who builds a city with bloodshed and establishes a town by crime." Habakkuk 2:12

HEALING ARTS OR KILLING ARTS???

Wesley Hospital currently hosts, in the residency program, three local abortionists. With a long history of encouraging and protecting childkilling in Wichita, Wesley Hospital stands in the shoes of Goliath of old, crying out curses against the Living God and his people. The childkilling empire that exists in Wichita could not stand without the support of HCA Wesley.

On behalf of the Christians of Wichita:

- We are calling on Wesley to repent and turn from its' childkilling ways.
- We are calling on Wesley to live up to its' great evangelical heritage, to return to the faith of the Wesley family.
- We are calling on Wesley to dislodge from the residency program the three documented local childkillers pictured below.
- We are calling on Wesley to announce a public policy that affirms the right to life, and denounces those who harvest unborn human life for a profit.

The Childkillers of Wesley Hospital



H. Joseph Jessup, M.D.



Robert M. Moore, M.D.



David D. Duke, M.D.

Please join the Wichita pro-life community in;

- a. Praying for Duke, Moore and Jessup. Pray specifically that the Lord would reveal to them His love for the children they kill, and that He would grant them mercy and repentance.
- b. Notifying women deceived and misled by the abortion industry that medical, legal, and spiritual help is available. Call 1-800-634-2224.
- c. Calling the management of Wesley Hospital to let them know you will no longer be using their services until the above requests are acted upon. Call CEO Jim Blits, 688-2097, and PR Director Bob Choi, 688-3018.
- d. Photocopy this flier and post in churches, public halls, civic organizations and workplaces.
- e. Publically confront the childkillers with their evil, asking, for the sake of the children and women, that they repent.

Prepared and distributed by Renew Youth for America, in memory of our slain peers.

Mr. SCHUMER. Mr. Weber.

STATEMENT OF WALTER M. WEBER, ESQ., LITIGATION COUNSEL, AMERICAN CENTER FOR LAW AND JUSTICE, WASHINGTON, DC

Mr. WEBER. Thank you, Mr. Chairman, Members of Congress. I want to thank you for having me here. This is the first time, I think for Mr. Cowles also, that I have ever appeared before a subcommittee, and it is somewhat of an "intimidating" experience, but not an unlawful one.

Mr. SCHUMER. We are not as bad as we look, Mr. Weber.

Mr. WEBER. My statement in the record covers most of the points. I don't want to needlessly repeat them. There are a couple of issues that I wanted to mention, sort of from the attorney's perspective.

We get a lot of inquiries from people dealing with situations where it is very difficult to come up with a remedy. When you have a conflict between people over an important issue that they feel very strongly about, there often will be those people who cross the line from courteous and civil tactics into what can be fairly called annoying or provocative.

For example, one of the cases I am working on right now in North Carolina where basically our clients were involved in lawful residential picketing, that is to say the police were present every time our clients were out there and never found an occasion for arrest. We had a hearing on an injunction, and immediately after our clients appeared on TV, they started getting crank phone calls, people call and when you pick up the phone you hear "click," no answer. What can you do about that?

Well, there is not really a whole lot you can do about that if you don't know who it is that is making the call. If there was a way that the Congress could intervene in these kinds of social controversies to keep peace on both sides, to keep everyone acting like adults with their political views, then that would be nice.

But that kind of micromanagement of low-level conflict has baffled State law enforcement authorities for years.

When someone calls me up and says I was falsely accused of trespassing in a parking lot when I was standing on a sidewalk, what can I do about that? That is an issue of the fact that is going to have to go before the jury, and it is going to involve witnesses and prosecutors, and it is essentially a case-by-case, time-consuming process to get these kinds of incidents straightened out.

I don't know that that is the kind of thing that Federal judges and prosecutors are going to appreciate being involved in. In these cases it is your word against his word, and "maybe that is what happened," and "let's let the jury think about it." Is that really the kind of thing we want to spend Federal money on? I leave that to the budget makers to consider.

As for the constitutional issues, I know there is a lot of question over whether or not Federal remedial legislation would be unconstitutional under existing Supreme Court precedent.

The *Mosley* and the *Carey v. Brown* cases talked about discriminating on the basis of content with respect to speech in a public forum. Those cases alone, up to that point, would not have settled

the issue whether or not government could single out a particular movement with respect to unlawful conduct.

But that issue was decided with the *R.A.V.* case. Up to that point, it could have been argued that when you burn a cross on somebody's lawn, that is unlawful and government can single you out as much as it pleases.

But the Supreme Court said, no, you can't do that, even though the activity is unlawful, even though burning a cross is arson, it is trespass, you can't say that it is only unlawful for certain movements to do.

While it may be essentially neutral to say we are going to prohibit all kinds of blockades whether for or against abortion, I don't know in practice that that really holds up for the simple reason that there aren't any proabortion blockades of pregnancy centers. There may be legal harassment that is going on.

If, for example, you had a law that said we are going to forbid all obstruction on the issue of pollution, those who demonstrate for it and those who demonstrate against it, well, who demonstrates for it? Such protest just doesn't exist.

So although the law may look like it is neutral in its impact, it can be very clear that it is targeting one specific movement. And as I said, the Supreme Court has made it clear with the *R.A.V.* case that that is not something that can be done. Nor does it need to be done.

If, for example, you forbid blockading anywhere by anybody, then those who are breaking the law are the ones who are going to be affected by it. But you don't need to limit the law to abortion protests in order to accomplish that end. If you do, then you are giving away an illegitimate purpose, which is to target a specific movement.

I don't know that there is much more I want to add except one point gleaned from my experience in doing the legal research on those kinds of cases, cases that ask "Where is the border drawn between legitimate, lawful, protected protest and unlawful conduct?" These cases almost always involve local ordinances and State court injunctions.

I think the reason for that is the notion that the States are the proving grounds where government authorities on a local level can address a problem, have it tested in the courts, and then refine their laws in response to what the judge rules. You get a back-and-forth interplay whereby we, over the course of years, delineate what is protected speech and what is not.

The fact that there are a whole lot of cases on these questions at the local level shows that this is a very rich source of litigation. I don't know that the law of public protest would lend itself to a definitive Federal pronouncement. The law in this area is so subject to dispute, and so often being dragged into court for refinement. For the Federal Government to intervene in an area which is so hotly litigated would be essentially to involve the Federal Government in trial and error litigation. Again, this is not something that the Congress may necessarily want to do. Beyond that, I submit my written statement and I will be happy to answer any questions you have.

[The prepared statement of Mr. Weber follows:]

PREPARED STATEMENT OF WALTER M. WEBER, ESQ.,¹
LITIGATION COUNSEL,
AMERICAN CENTER FOR LAW AND JUSTICE
 before the
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
 of the
HOUSE COMMITTEE ON THE JUDICIARY
April 1, 1993

I have been asked to present a legal perspective on the efforts of pro-life Americans to hold abortionists publicly accountable for their practice of taking the lives of unborn human children.

Introduction

I recognize the existence of a sharp division in Congress as well as the general American public over the morality of human abortion. I also recognize the considerable controversy over the nature of the impact of human abortion not only upon the mother and her child but also upon fathers, siblings, the medical and legal professions, and society as a whole. My intention is not to address the issue of human abortion per se, though in the interest of candor I should state that I consider the practice of human abortion a national shame, a human tragedy, and a flagrant violation of the most basic human and civil rights. I leave a fuller discussion of that subject for another day.

What suffices to introduce my comments is the observation that, whatever one thinks of abortion, its practice is unquestionably the subject of major controversy on all levels of society and government. Abortion is a matter of public concern par excellence.

¹ A.B. Princeton University, 1981; J.D. Yale Law School. 1984.

One consequence of this fact is that Congressional consideration of legal measures cannot be limited to protest over abortion. The constitutional and other legal rules that apply in this context must be the same as those which govern public controversy over any issue of broad concern.

In other words, the law governing public protest against abortionists is -- and must be -- the same law which governs public protest against blockbusting realtors, officers of major corporate polluters, slumlords, pornographers, handgun dealers, and anyone else whose occupation provokes the opposition of some segment of the populace.

I. The Scope of the Problem

The central problem in the context of anti-abortion protest activity is the recurrent effort to deny the civil liberties of pro-life activists.

I have been involved in the legal representation of pro-life citizens for the past eight years. I can state unequivocally that it is a privilege and an honor to represent these clients.

My clients are ordinary people: housewives, retirees, blue collar workers, school teachers, etc. Some sacrifice their free time to take part in pro-life activities; others have dedicated themselves directly to pro-life work. In either case, my clients are peaceable, moral, and frequently church-going people -- the kind of people who form the backbone of civilized society.

So what is all the fuss about? Why is this subcommittee holding hearings about the supposed "threat" these harmless people pose?

In my opinion, what is at stake here is an attempt to suppress unwanted pro-life speech.

A woman pushing a baby stroller is not threatening. The fact that she carries a placard creates no legitimate basis for concern. What triggers the reaction we are confronting today is the message she bears on her sign: "Doctor X Kills Unborn Babies."

The question before this subcommittee is straightforward: should the Congress be in the business of protecting abortionists (or anyone else, for that matter) from messages that disturb their consciences?

The answer, in light of the First Amendment, has to be "No."

Yet this has not stopped municipalities and trial court judges from trying to restrict pro-life protest activities through ordinances and injunctions. Across the nation, the constitutional rights of pro-life demonstrators are under siege.

This is not merely my personal opinion or the exclusive view of pro-life groups. The American Civil Liberties Union, for example, which strongly advocates abortion rights, has taken legal positions in support of our clients in a number of cases. In Frisby v. Schultz, 487 U.S. 474 (1988), the most recent Supreme Court case on residential picketing, the ACLU filed an amicus brief in support of the pro-life demonstrators. The Wisconsin Civil Liberties Union Foundation likewise filed amicus briefs supporting our clients in both of the lower federal courts in Frisby. In Kaplan v. Prolife Action League of Greensboro, a residential picketing case now pending in the North Carolina court of appeals, the North Carolina Civil Liberties Union has filed an amicus brief supporting our pro-life clients. In Prairie Village, Kansas v. Hogan, a picketing case now pending in the Supreme Court of Kansas, the Kansas Civil Liberties Union has requested permission to file an amicus brief in support of our client, who was convicted of carrying a pro-life placard in the vicinity of a church.

What is really at stake here, then, are the civil liberties of pro-life citizens -- and, by analogy, of anyone who disagrees with the status quo. As the ACLU realizes, these cases are about free speech, not abortion.

If this subcommittee wishes to make a constructive contribution to the current controversy it should condemn, not pro-life activists, but the attempt by government officials to deny freedom of expression in the interest of an enforced silence.

II. The Constitutional Ground Rules

Any Congressional intervention in the area of public protest against abortionists would immediately trigger a host of constitutional concerns. It is therefore appropriate briefly to survey some of the governing constitutional standards.

A. Protest in Residential Neighborhoods

The seminal decisions of the U.S. Supreme Court regarding residential protests are Gregory v. City of Chicago, 394 U.S. 111 (1969), Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971), and Frisby v. Schultz, 487 U.S. 474 (1988). These and other Supreme Court cases establish strong protection even for aggressive protest activities employed in residential settings.

In Gregory, some 85 protesters marched around and around the block in Chicago where then Mayor Daley lived. The demonstrators sang songs and chanted such slogans as "Ben Willis must go, Snake Daley, also," and "We are going to the home of the snake, the snake pit is down the street." The marchers arrived at Mayor Daley's house at 8:00 p.m. and protested vocally for a half hour. From 8:30 p.m. on, the demonstrators marched silently. When an angry mob of counter-demonstrators became unruly, police arrested the marchers, at 9:30 p.m. See 394

U.S. at 126-29 (Appendix to concurring opinion of Black, J.). The marchers were subsequently convicted of disorderly conduct. The U.S. Supreme Court unanimously reversed the criminal convictions of the marchers.

Chief Justice Earl Warren, writing for the Court, declared, "This is a simple case." *Id.* at 111. The march, Warren wrote, fell "well within the sphere of conduct protected by the First Amendment." *Id.* at 112.

In the Keefe case, protesters who objected to the sales tactics of a real estate broker distributed leaflets, criticizing the broker's practices,² at a local shopping center, at the church the broker attended, and at the doors of the broker's neighbors. 402 U.S. at 416-17. The broker obtained a temporary injunction enjoining the distribution of literature and picketing. *Id.* at 417. An appellate court affirmed, ruling that the protesters had invaded the broker's privacy and caused irreparable harm. *Id.* at 418. The appeals court "viewed the alleged activities as coercive and intimidating, rather than informative and therefore as not entitled to First Amendment protection." *Id.* The lower court emphasized its concern for "protection of the privacy of the home and family from encroachment of the nature of [the protesters'] activities." *Id.*

The Supreme Court reversed by an 8-1 vote, holding that the order was an unconstitutional prior restraint on speech:

[T]he Appellate Court was apparently of the view that [the defendant protesters'] purpose in distributing their literature was not to inform the public, but to "force" [the plaintiff broker] to sign a no-solicitation agreement. The claim that the expressions were intended to exercise a

² Two of the leaflets even urged recipients to call the broker at his home phone number. 402 U.S. at 417.

coercive impact on [plaintiff] does not remove them from the reach of the First Amendment. [Defendants] plainly intended to influence [plaintiff's] conduct by their activities; this is not fundamentally different from the function of a newspaper. See Schneider v. State, [308 U.S. 147 (1939)]; Thornhill v. Alabama, 310 U.S. 88 (1940). [Defendants] were engaged openly and vigorously in making the public aware of [plaintiff's] real estate practices. Those practices were offensive to them, as the views and practices of [defendants] are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability.

Id. at 419. "No prior decisions," the Court added, "support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court." Id.

In the Frisby case, the Supreme Court reviewed a constitutional challenge to an ordinance banning residential picketing. 487 U.S. at 477. Holding that such an ordinance "operates at the core of the First Amendment," id. at 479, the Court imposed upon the ordinance "a narrowing construction that avoids constitutional difficulties," id. at 482: "only focused picketing taking place solely in front of a particular residence is prohibited," id. at 483 (emphasis added). By contrast, "[g]eneral marching through residential neighborhoods, or even walking a route in front of an entire block of houses, is not prohibited by this ordinance." Id.

The Frisby ordinance, as narrowly construed, permitted "[g]eneral marching through residential neighborhoods, or even walking a route in front of an entire block of houses," Id. at 483. The "type of picketing prohibited" was "fundamentally different" from such "generally directed means of communication that may not be completely banned in residential areas." Id. at 486 (emphasis added) (citing cases recognizing First Amendment protection for handbilling, solicitation, and marching).

The import of this language from Frisby is two-fold. First, a street-length ban on picketing or marching is unconstitutional -- otherwise, there would have been no need for the Court to impose "a narrowing construction that avoids constitutional difficulties." Id. at 482. Accord Gregory. Second, the Frisby ruling only tolerates a ban on picketers congregating at a particular home. If the Frisby ordinance had created a "forbidden zone" surrounding the abortionist's residence, then even transient marching would have been forbidden because of the marchers' passage, however momentary, in front of the abortionist's home. Mobile marching is immune from prohibition under Frisby because marching neither leaves the resident "trapped within the home" nor entails the "evil" of "targeted picketing" which is "the very presence of an unwelcome visitor at the home." Id. at 487 (internal quotation marks and citations omitted). Matching is "fundamentally different" from stationary, "targeted picketing," id. at 486.

Under Frisby, a municipality may require picketers to extend their march route to ensure no more than a transient physical presence in front of any given house. Frisby does not authorize a street-length "march-free zone." Demonstrators must remain free to pass in front of the house, so long as their route takes them substantially farther -- for example, the length of the block.

In light of these Supreme Court decisions, it is plain that the First Amendment sharply limits the ability of government to restrict peaceful residential protest activity. Demonstrators must, of course, obey such neutral state and local police power regulations as prohibitions on trespass, littering, and obstruction of traffic. But neither a municipality, nor a state, nor this Congress can make it unlawful to picket, march, distribute literature, or engage in other peaceful, public forms of expression. The First Amendment protects such activity even when

the language the demonstrators use is offensive or intemperate (e.g., calling a person a "snake") or directed at someone personally (e.g., urging other people to contact someone at home to express disagreement).

B. Singling Out Pro-Life Activists

It should go without saying that measures imposed against pro-life demonstrators must also apply to demonstrators on other issues.

In Police Dep't v. Mosley, 408 U.S. 92 (1972), the Supreme Court held that discriminatory treatment of protesters on the basis of their message is unconstitutional.

[U]nder the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. . . . Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone.

Id. at 96. The same rule applies to residential protest activities, Carey v. Brown, 447 U.S. 455 (1980). Furthermore, even if the government could forbid the particular conduct in question in general, it would be unconstitutional to forbid that conduct only for those representing a particular viewpoint or ideology. R.A.V. v. City of St. Paul, 112 S. Ct. 2709 (1992). Compare Frisby (may ban single-residence picketing) with Carey (may not ban residential picketing while exempting labor picketing).

Hence, it would be flagrantly unconstitutional for a law to target the pro-life movement alone. Any measure the Congress (or any state or local government) adopts would have to apply evenhandedly, which means including those who protest against segregation, apartheid, environmental abuse, animal exploitation, and so forth.

III. Federalism Concerns

Another important consideration is the propriety, as a matter of federalism, of Congressional intervention in the policing of the pro-life movement (or any other social movement). Obviously a state or local government is free to employ standard criminal and civil measures in those cases when individuals cross the line from lawful protest into unlawful tortious or criminal conduct. What then, is the consequence of additional federal intervention?

First, federal legislation might simply duplicate existing state law prohibitions. In such a case, Congress would be essentially increasing the workload of federal judges and prosecutors and depleting the federal budget. Such federal micro-management of the conduct of social controversies would be imprudent, wasteful, and demeaning to state authorities.

Second, federal legislation might expand upon existing state law prohibitions by cutting into lawful means of protest. Such a course would be unconstitutional.

Third, federal legislation might expand upon existing state law prohibitions by escalating the penalties (e.g., by providing increased sentences, treble damages, attorney fee awards, etc.). This would essentially represent federal second-guessing of state judgments as to the appropriate sanctions for unlawful conduct. Furthermore, by dramatically raising the legal stakes for protesters, such legislation would have very detrimental effects:

(1) Draconian penalties deter lawful protest. As the legislative counsel for the ACLU testified recently in the context of the federal RICO statute, when a law's "terms are so expansive and its penalties are so harsh, it has two major impacts on civil liberties. First, people who are, at most, guilty of technical violations are dragged into . . . law suits. Second, [such a law] has a chilling effect on the First Amendment rights of countless others. When the rules are vague, and the

penalties harsh, people will not exercise First Amendment rights but will 'steer far clear of the unlawful zone.'³

(2) Second, such harsh penalties tend to drive out the more moderate and cautious elements of an activist movement. A conscientiously law-abiding citizen is less likely to take part in a protest when the consequence of one false step -- or one false accusation believed by a judge or jury -- is exposure to crushing legal sanctions.

The extremist elements of the abortion rights movement might desire the chilling of lawful pro-life protest and the suppression or radicalization of the pro-life movement. These are not, however, legitimate goals for Congressional action.

In my experience, there is no shortage of state and local judges,⁵ prosecutors and legislators who are ready, willing, and able to hold pro-life citizens accountable for every legal misstep they may make. If anything, opponents of abortion face a double standard that treats them much more harshly than members of other protest movements (and also more harshly than other individuals charged with comparable offenses).

Federal intrusion into the realm of local police power is therefore both unwarranted and inimical to the respect due to the authority of state and local governments.

Conclusion

Congressional supervision of the protest methods of a social movement, be it the pro-life movement or any other, is antithetical to civil liberties, unconstitutionally restrictive of First Amendment rights, and destructive of federalism. State and local authorities are perfectly

³ Statement of Antonio J. Califa, Legislative Counsel, Washington Office of the American Civil Liberties Union, Hearings before the Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary on H.R. 1717 (Apr. 25, 1991), at pp. 119-20 (footnote omitted).

capable of handling unlawful incidents if and when they arise, without the need for Congress to burden federal prosecutors and judges with unnecessary additional responsibilities.

I thank you for your attention.

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Washington, DC 20007

Mr. SCHUMER. Thank you. I want to thank both of you for your very thoughtful testimony. It shows we are dealing with a difficult issue here.

Let me ask both of you to help us explore the line between speech protected by the first amendment and acts of harassment. While it may include speech, it may not be protected. What about stalking itself? The stalking laws are relatively new on the books in the approximately 30 States that have them. Let's leave choice out of this issue.

What is each of your views on laws that prevent stalking? That is, following somebody around constantly, that creates, at least in their mind, the threat of violence or whatever? Mr. Cowles.

Mr. COWLES. Well——

Mr. SCHUMER. Do you think those are constitutional?

Mr. COWLES. Yes. I do think stalking laws are constitutional, particularly in the context where the purpose of the stalking is to impede or intimidate someone from the exercise of their constitutional rights.

In the context of abortion clinics, the only reason doctors and patients are stalked is because they are choosing to exercise their constitutional rights. In that way it is analogous to the KKK and civil rights laws passed to curb the abuses of the KKK.

That included what we would now term to be stalking; and so I think there is an obvious constitutional legitimacy to outlawing stalking when the purpose of it is to infringe on other person's protected constitutional rights.

Mr. SCHUMER. What about if it wasn't? What about if it was a potentially criminal act but not dealing with the constitutional right? Do you still think it is constitutional?

Mr. COWLES. You mean a Federal statute?

Mr. SCHUMER. There is a lot of talk just on the issue of stalking in general and passing a Federal statute. I have been asked to draft one by a number of different groups, people, other Members I think have drafted them. I think Senator Boxer has done this.

Mr. COWLES. In my opinion a Federal stalking law would have to somehow have a Federal implication, either on interstate commerce, or on some constitutional right or have some sort of Federal basis on which that statute could be based.

Mr. EDWARDS. If the gentleman will yield, Mr. Cowles said in the sentence before there was a constitutional right to the abortion and it would be interfering with a constitutional right.

Mr. SCHUMER. That was clear.

Mr. EDWARDS. In that case, if that were used as the basis for the law, why would it need other constitutional——

Mr. SCHUMER. I asked him a second question which said if there weren't an abortion.

Mr. Weber, how about stalking in terms of preventing a Federal right, say?

Mr. WEBER. Assuming Congress had the power, which is a different question. I am not an expert on that. I have, in fact, been asked by other attorneys for my opinions on stalking laws. When I get an inquiry like that, I have to say, you have to deal with the text of the law before you can answer that; it could be drafted in so many different ways.

Mr. SCHUMER. Are there ways to draft it to make it constitutional?

Mr. WEBER. Yes. Yes. Those I have seen, when I look at them, the majority of the provisions will often be directed generally toward criminal conduct. The problem is, then, when you go beyond that and get into terms that are somewhat murky like "harassment," "annoyance," "interference," and the reason why that is a problem is because those terms are so malleable.

I would cite for the court's information a couple of authorities you might want to look at.

Mr. SCHUMER. We are not a court yet. Mr. Terry seemed to think we were great constitutional experts.

Mr. WEBER. I understand you are all lawyers. The *Gallella* case, *Gallella v. Onassis*, Jackie Onassis was followed by a photographer who said he had press rights. The question is what limits do those press rights have. I think there was a lot of careful analysis in that case.

Mr. SCHUMER. Let me ask you each on surveillance, let us say you are setting up a camera and follow someone around 24 hours a day, again, which we know has happened. We cannot figure out who does it since the groups here seemed not to be involved in it by what they stated here. What about constitutionally including that?

Mr. COWLES. I think that that is stalking. There were a lot of people in Mr. Terry's group doing the videotaping and photography of patients and doctors; I don't know about 24 hours a day, but constantly at the clinic.

Mr. SCHUMER. Were these part of Operation Rescue to the best of your knowledge, just because Mr. Terry denied all of this before.

Mr. COWLES. The 1991 so-called Summer of Mercy in Wichita was an Operation Rescue operation in its totality. It included Mr. Tucci, Mr. Foreman, Mr. Terry, Mr. Jeff White; all the other names you hear associated with Operation Rescue were in Wichita.

Mr. SCHUMER. Did they involve themselves in some of the actions they said they didn't do here?

Mr. COWLES. For the most part, they are truly "wimps." They will not get into the driveway. They know that that will subject them to an arrest, that they have done it many times before, the judge will take that into consideration.

Jeff White did get underneath a vehicle. After he promised he would go back to California, the Federal judge let him go.

But the previous point I was wanting to make, Mr. Schumer, is the videotaping is done to get license tag information, to follow people to see where they go so it is recorded if they go to this place of business; that is where they work; then that becomes a target. If they go to a home, they know that that is where they go.

The hotel where our patients stayed in Wichita was targeted. Flyers were put under the doors of every hotel room saying abortions were being done in the hotel and they should complain to the management. I included that as an attachment to my written testimony.

Mr. SCHUMER. You feel that fits under a stalking type of situation?

Mr. COWLES. Absolutely.

Mr. SCHUMER. How about you, Mr. Weber?

Mr. WEBER. Listening to Mr. Cowles reminded me of a case one of my colleagues called my attention to before, *NAACP v. Claiborne Hardware*. I didn't remember this until he found it for me.

Apparently what happened in that case was, I will quote here, "Individuals stood outside a boycotted store and identified those who traded with the merchants. Some of these were members of the group known as the Black Hats or the Deacons. The names of persons who violated the boycott were read at meetings of the Claiborne County NAACP and published in a mimeographed paper entitled the "Black Times" and stated by the chancellor, those persons 'were branded as traitors to the black cause, called demeaning names, and socially ostracized for merely trading with whites.'"

The Supreme Court goes on to say, in essence, that that was legitimate, even though it might have been annoying and might have been—you might disagree with it as a matter of taste or fairness. It still was considered to be within the first amendment.

Mr. SCHUMER. Although, that is a boycott not involving the threat of violence.

Mr. WEBER. The reason I mention it is the idea of identifying people.

Mr. SCHUMER. One final question for you, Mr. Weber. I think a number of us were confused by this conundrum. The previous group said they don't get involved in the violent type of activities or even the ones that are questionable. Second, they said they understand when they do pure civil disobedience, the blockade, they expect to be punished for it. Third, they said the legislation that I have introduced with Congresswoman Morella would "crush them." Do you share that view?

Mr. WEBER. I don't know what would happen. I suspect what might happen is in the same way that the slaying of Dr. Gunn has given the abortion advocates a martyr, if someone like a Joan Andrews who obviously is no threat were to end up getting a serious penalty and put in the Federal slammer, you might give the prolife movement a martyr.

Mr. SCHUMER. It wouldn't crush them?

Mr. WEBER. I don't know. I get people who call me and say if I do this, what will happen to me. I always tell them I don't know what will happen to you. It depends on how much they want to go after you.

Mr. COWLES. May I comment on that, Mr. Chairman?

"This would crush them." To me, that is rather ridiculous. Up until the *Bray* decision of a few months ago, there were Federal injunctions under 1985(3) in jurisdictions all across the country. That didn't crush them. It controlled their movement. It prevented violence. It has been since the *Bray* decision—and I don't want to suggest there is a direct causation here—but it has been since the *Bray* decision came down that said there will not be a Federal injunction under 1985(3), that there has been the arson in Montana, the doctor murdered in Florida, and more violence at the clinics in Wichita.

So that would be my answer to the question.

Mr. SCHUMER. Thank you, Mr. Cowles.

Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman. I, too, thank the witnesses for very valuable testimony.

In the 1960's when the Federal Government finally started enforcing the Constitution in the States, especially in the South where African-Americans were subjected to illegal violent conduct, murders, and burnings, bombings, and so forth, it quite effectively stopped the violence and the opponents to the civil rights legislation and to integration turned to the legislatures, to Congress, and tried to defeat the laws which is I believe the way our Founding Fathers had in mind to resolve these problems.

Do you think if we pass a law similar to what Mr. Schumer and Mrs. Morella's law provides that similar results could take place, where these people—we want to ensure they have the right to protest and to do everything that the Constitution allows them to do; but do you think this would encourage them to stay within the limits of the Constitution?

Mr. COWLES. If I may answer first, Mr. Edwards, I think for the mainstream prolife person, I think that what you suggest would happen. There are certain people like Mr. Terry that it really does not matter if there is a Federal injunction there or not. He will try to blockade driveways.

What is important is that there be a Federal cause of action to get that injunction so that marshals can get him out of the driveway.

Right now, that is in serious question after the Supreme Court decision of last January. So I think you are right. If this legislation were to pass, the vast mainstream of people in the prolife movement do want to behave within the law. So those folks would be deterred.

I think there will always be a fringe element that wants to flout the law on this issue, and there would be no way to prevent them from crossing the boundary of the law but at least you would have the law established and everyone would know that there is a cause of action in Federal court and it would give the judges the jurisdiction to craft the appropriate remedies so everyone's rights are protected.

Mr. EDWARDS. Thank you.

Do you generally agree, Mr. Weber?

Mr. WEBER. I want to make sure I am not misinterpreting what Mr. Cowles said. When he says a majority of law abiding Americans would be deterred, that can mean two things, because if they are already going to be deterred by the unlawfulness of the conduct, they are not going to be doing rescues now.

Increasing the penalties isn't going to have an effect on them. Except insofar as they want to do things which are within the law and are afraid if they do that they may be subjected to such high stakes, they will therefore refrain from lawful protest. I want to make sure I am not misinterpreting what you had to say.

Mr. EDWARDS. We would be the first committee to protest that and to take to task a Department of Justice if they moved in that direction because we have a long history of enforcing the first amendment in this committee.

Thank you, Mr. Chairman.

Mr. SCHUMER. Mr. Glickman.

Mr. GLICKMAN. Thank you. I wonder if you might talk for a moment about the response of the State of Kansas after these demonstrations, if you might let the committee know what the State legislature did in terms of demonstrating and whether it was an adequate response or not, because the State did take formal action.

Mr. COWLES. Yes. After the summer of 1991, there was legislation introduced in the Kansas State Legislature which was sort of a negotiated set of legislation that provided for a—provided formally for a right to abortion in Kansas under certain restrictions similar to those that you are familiar with from the Pennsylvania law that was recently litigated in the Supreme Court, in the *Casey* decision.

As a part of that legislation, they also included a clinic blockade section of the statute which made it a crime to blockade a clinic. I think that that is what Mr. Glickman is referring to.

So for the first time, we had a specific crime on the books in the State of Kansas that made it a crime to blockade a clinic.

The reason that does not make this legislation moot is that to enforce a State criminal law, you have to have willing police, prosecutors, and State court judges, all that are subjected to political pressures to one degree or another depending on where they happen to be.

But whether or not those people would be arrested under State criminal law would mean you are going to have to have the good fortune of having all three of those be respective of that law and committed to enforcing it.

We have found that that is not always true on a local basis; and that is the traditional fundamental role of Federal courts, is to rise above the local political fray and say you can get in front of a Federal judge that has lifetime tenure, who is not subjected to the political tugging and pulling and he can decide when all of your efforts to remedy a situation have gone unprotected by local law enforcement or local judges, prosecutors, whatever, you have the avenue of going to Federal court and having your constitutional rights protected. That has been the American system. To me, that is what this legislation is designed to protect.

Mr. GLICKMAN. Does the Kansas law permit an injunctive action on clinic blockades?

Mr. COWLES. That statute does not. It is a criminal statute.

Mr. GLICKMAN. A straight criminal statute?

Mr. COWLES. That is right. Mr. Weber would probably point out we theoretically could get an injunction in State court claiming the tort of nuisance, for example; or interference with business relations. There are tort theories we could get into State court and get an injunction against a blockading activity even though there is not a specific State statute for that. That is theoretically possible. Again, that is subject to the drawback of which elected State court judge you are going to get who is going to determine how to craft that injunction.

In the case of Wichita, the other complicating factor we looked at when choosing which forum to file in, the clinic was in one county, Sedgwick County, and the physician lived in Butler County. There was harassment going on at both locations. There would be venue problems, trying to get a State injunction in one county that

would be enforceable in another county. You would have to file two lawsuits.

Having a Federal injunction that covers the entire situation was by far preferable.

Mr. GLICKMAN. Let me also get to this other point, that is the role of the local police, and what you said was it wasn't that the local police themselves were reluctant to enforce the law, it was that the elected governing bodies were perhaps ambivalent or opposed to enforcing the law or unclear or not wanting to make decisions or all of the above; is that correct?

Mr. COWLES. Well, specifically what happened was at the time that they sent the police—before the protests began, at the time they sent a police lieutenant to me to discuss what the police were going to do, at the very same time the city manager and mayor unbeknownst to me were meeting with Keith Tucci, Randall Terry, this crowd. The message was we are bringing hundreds, if not thousands, to Wichita. We will overwhelm you. If you want to negotiate a way for us to be arrested, we will negotiate with you about that.

Mr. GLICKMAN. They were advance bargaining the civil disobedience that was going to take place?

Mr. COWLES. Exactly. The result of that was the city manager, the mayor agreed to allow the blockades to form. The police were not allowed to try to interrupt that. They were not allowed to immediately arrest protesters. They had to allow them to do this ridiculous baby step out of the driveway. That shut down our clinic all day long.

Mr. GLICKMAN. One of the witnesses today, maybe Mr. White, suggested before we federalize this, we ought to bring in local law enforcement people to talk about whether they are able, willing, or capable of enforcing the law. What do you think about that?

Mr. COWLES. I think they would sit here and tell you they are fully capable of enforcing the law and would want to do it. The problem is they don't get—they are not the boss of the police department. It is the city manager and the mayor. When their jobs are on the line, when the policy of the city comes down as to how these protests are going to be handled. The police officers' hands were tied.

Mr. GLICKMAN. Finally one witness today, Ms. Hudson, testified there are abusive tactics and violence on both sides. You represented one of the clinics. You were an active participant in this thing. Could you comment on what she said based upon what you saw?

Mr. COWLES. Well, when these protests began, there really was no presence at all of the so-called prochoice, I don't know if you would call them protesters, clinic defense people. As the protests continued, they formed a group called clinic defense and so forth. Those folks helped patients get inside the clinic, through the blockades. What I saw, I saw shouting back and forth and ordinary everyday things, but I saw no acts of what I would call violence or harassment or intimidation or stalking or anything like that.

Once Judge Kelly signed the injunction, the Federal marshals separated the two groups, and there were assigned standing places

for the protesters and assigned standing places for the clinic support people and an assigned standing place for the press.

Mr. GLICKMAN. Once that happened, did people honor that agreement for the most part?

Mr. COWLES. For the most part. Every once in a while, the protesters in a mad dash would go underneath the police line and baby crawl back into the driveway. It caused a problem.

Mr. GLICKMAN. But the power of the Federal judge to enforce an injunctive order did seem to have obviously as much power as anything would have? It is with the presence of U.S. marshals; right?

Mr. COWLES. It was like night and day, Congressman. It really was. When the Federal marshals got there, they wore the jackets with U.S. marshals on it, and people did not cross U.S. Marshal lines.

Mr. GLICKMAN. OK.

Thank you very much.

Mr. SCHUMER. Thank you, Mr. Glickman.

I want to thank both of our witnesses not only for their excellent written and oral testimony but for their patience in waiting through the day.

Before I conclude, I want to thank, first, the membership. I think we had a very good turnout, a lot of interest, a lot of questions as there should be before we move any changes in the legislation that we passed, before we move the legislation itself.

I want to thank the subcommittee staff who did a great job, Gabrielle Gallegos; the minority; Andrew Fois; and Rachel Jacobson, for conveying all our messages with such alacrity.

I also want to thank our reporter who always works hard and never gets notice. I am supposed to have the name all the time, but we didn't get it today. Dennis Dinkel and Ann Blazejewski were our reporters today. We thank you.

With that, the hearing is adjourned.

[Whereupon, at 2:55 p.m., the subcommittee adjourned, to reconvene subject to the call of the chair.]

ABORTION CLINIC VIOLENCE

THURSDAY, JUNE 10, 1993

SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:13 p.m., in room 2237, Rayburn House Office Building, Hon. Charles E. Schumer (chairman of the subcommittee) presiding.

Present: Representatives Charles E. Schumer, Don Edwards, and F. James Sensenbrenner, Jr.

Also present: Andrew Fois, counsel; Gabrielle Gallegos, assistant counsel; Rachel Jacobson, clerk; and Lyle Nirenberg, minority counsel.

Mr. SCHUMER. This hearing will come to order, and let me first say that this is a minority-requested hearing on the clinic access bill that is now out of committee. We already have had hearings on this bill, but Mr. Sensenbrenner felt that the point of view that he and others had expressed was not adequately represented at the hearing, and so we are having this minority hearing, which is not exclusively but preponderantly witnesses chosen by the minority. I think of the eight witnesses, seven are by the minority.

Mr. SENSENBRENNER. That is correct.

Mr. SCHUMER. Let me just say, I would hope the witnesses, when they testify, keep two things in mind. This is not a bill or a hearing on prochoice or prolife. People on our subcommittee, people in the Congress, people in America have deeply held views on that issue. This is, rather, a bill on what ways they may use or appropriately constitutional ways to exhibit those views.

It is my belief, it was a belief of the vast majority of members of this committee, not all of whom have prochoice views, that physical obstruction of one's desire to have an abortion or one's desire—because the bill is neutrally drawn—to give advice not to have an abortion is against the Constitution and against the American way of life.

Now I understand—as somebody from my background, I have thought about the Nuremberg laws pretty carefully and pretty seriously, and I realize there are no absolutes—there are times when people feel they must resist government and use physical force, sometimes peaceful physical force, because they have a moral view that they think supersedes the governmental view.

But even those people—Mahatma Gandhi did that, Martin Luther King did that, and some of the people in the prolife movement do that; not all, not even close to a majority do that—realize that

the Government must react to them and cannot allow blockades or other types of physical intimidation to continue. That is what our bill was designed to do. In the eyes of most of the Members, that is what it did—as I said, prolife and prochoice people.

If I believed the bill would infringe my bishop in Brooklyn, Bishop Daley, a man I have great respect for, who prays that rosary every month in front of an abortion clinic—if I thought my bill would stop him from doing that, I would withdraw the bill, but it doesn't, and so I would ask each of the witnesses—because that is an American right second to none, the right to protest.

A lot of the writings by some of the prolife movement have mischaracterized the bill. I don't think the people have read it, and I would ask each of the witnesses, if they are opposed to this bill, first I would ask them—and within your 5 minutes you can say whatever you wish, but I would ask each of the witnesses to try and address that issue, because that is what this bill is about, not their views on life or on choice; and, second, I would ask them to give their views, if they are against the bill, where it might stop the peaceful right to protest.

With that, I yield to my colleague, Jim Sensenbrenner, who really did most of the work and set up this hearing.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. I will be brief.

The chairman is correct in stating this hearing is called under a little used provision of the House rules that allows the minority to have 1 day of hearings at which the minority may call witnesses. The reason that this provision of the rules is little used is that most hearings are balanced in that both sides are given a fair shot at expressing their views and answering questions by members of the subcommittee.

I felt that our previous hearing on this subject was not in that it excluded people from the mainstream prolife movement to give their views on the subject of the clinic access bill as well as the fact that there were no witnesses that could be able to testify as to the fact that prochoice people have committed acts of violence against prolife people, and I think it is important that the hearing record be complete in this respect.

Having said that, let me say two things. First, no one in the prolife movement condones acts of violence, assaults, or murders against anyone, regardless of what their viewpoints are on the subject of abortion, and I believe that the murder of Dr. Gunn in Pensacola, FL, was a tragedy that harmed that prolife movement greatly, and I expressed my sympathy to his family and to his survivors and to his coworkers. So there is no room for violence, for assaults, or for murders within the prolife movement.

Second, I fear that the bill that has been reported from the subcommittee tramples on the first amendment rights of antiabortion protesters. The first amendment was not designed to protect politically correct speech, and the reason I feel this very, very strongly is that if during the 1960's, we had legislation like this that took a specific side on a specific issue, there may not have been a civil rights revolution in this country.

The reason this bill is so constitutionally suspect is that it singles out people who are on one side on the issue of abortion and

attempts to restrict their free speech. If it were an across-the-board prohibition of certain types of activity, there would not be constitutional problems with it. But I view it kind of with the analogy of a city passing an ordinance prohibiting the use of sound trucks going down the street after 9 o'clock at night. That is constitutional. But if it said that you couldn't use sound trucks unless you were promoting Republican candidates or people who wished to preserve the Brazilian rain forest, then that would not be constitutional, because there the legislative body that is passing this legislation is taking sides in a particular debate or a particular campaign, and, regardless of the motivation of the legislation and its supporters, we can't forget that the Constitution of the United States does protect the freedom of speech and the right to practice one's religion as one sees fit or not to practice religion at all.

So that is why I thought that the hearing record should be balanced. I remain convinced that the bill reported out of this subcommittee is unconstitutional. I concede the point that the Congress is not the Supreme Court, but I think that if this bill passed and did go up to the Supreme Court a majority of the Justices would view it my way.

Thank you.

Mr. SCHUMER. Thank you, Mr. Sensenbrenner.

I am just going to make two quick points. The hearings didn't have people from the mainstream prolife movement, nor did they have people from the mainstream prochoice movement, because we thought the hearing was not prolife or prochoice. It is still the minority's prerogative to call those witnesses here. Second, I would ask the witnesses, again, to point out language in the legislation, the language that was reported out of subcommittee, which was narrower than the original bill, that would impede their right for peaceful protest.

Mr. SCHUMER. We now will call our first panel, and would they all please come forward. The first panel is: Reverend McHugh, Rabbi Levin, Reverend Mahoney, Ms. Mahoney, Mr. Wood, and Mr. Eliason.

You may come forward and take seats. There are name tags there; I don't know if they are on both sides. It goes in this order: McHugh, Levin, Mahoney, Ms. Mahoney, Wood, Eliason, and since we are going to limit testimony to 5 minutes maybe we will start then with Reverend McHugh, who is the bishop of Camden, and I will introduce each witness before they speak so the introductions don't take the break of time.

Reverend, we want to welcome you, and your entire statement will be read into the record. You have 5 minutes to do whatever you like.

STATEMENT OF REV. JAMES T. McHUGH, BISHOP OF THE CATHOLIC DIOCESE OF CAMDEN, NJ

Reverend McHUGH. Thank you, Mr. Chairman.

I am Bishop James McHugh, the bishop of the Catholic Diocese of Camden, NJ. I appear here today on behalf of the Committee for Pro-Life Activities of the National Conference of Catholic Bishops, of which I am a member.

I want to be clear regarding my reasons for testifying at this hearing. While I have respect and admiration for those who give public witness to their prolife convictions at abortion facilities, the National Conference of Catholic Bishops' Pastoral Plan for Pro-Life Activities does not directly address such activities. Some bishops, as the chairman has noted, have taken part in peaceful public demonstrations, others have led public prayer near abortion facilities, and still others prefer to focus on other efforts specifically outlined in the pastoral plan.

At any rate, in regard to public demonstrations, we have unanimously condemned any resort to violence at abortion facilities, and we are not institutionally committed to the activities which sponsors say are prohibited by this bill. We feel, therefore, that we can assess its purpose and likely effects somewhat dispassionately.

As Americans too, we acknowledge a long tradition in our democracy of public protest and even civil disobedience by people committed to a variety of important causes. In this regard, we need look only at the early labor demonstrations or the picket lines accompanying present-day strikes. We have also seen this phenomenon in the context of the war in Vietnam, the struggle for racial equality, the threat of nuclear proliferation, and a wide variety of other social issues. Concerned Americans have long shown their willingness to protest what they see as unjust and destructive governmental policies and even to place their own lives and well being at risk.

We find that H.R. 796 is difficult to reconcile with this longstanding American tradition. It singles out one group, that of prolife protesters, for special penalties imposed on no one else. It is harshly discriminatory against them based on the content of their beliefs.

The bill's sweeping intent was apparent in its original language, penalizing anyone who "obstructs, hinders, or impedes" access to an abortion facility. While the subcommittee has changed this language to refer only to those who obstruct access, the term is nowhere defined. Equally undefined is the bill's language about "the intent to prevent or discourage" abortion. No distinction is made, or carefully made, regarding the words "prevent or discourage."

H.R. 796 seems wrapped in the language of vagueness in order to avoid facing the reality of the escalating incidence of abortion in our society, now at 1.6 million a year.

To some degree I think I disagree with the chairman in his effort to dissociate this bill from the ongoing national debate about abortion. I don't think you can talk about this bill without acknowledging the abortion debate that goes on in our culture, and the bill itself is inextricably bound up with that. We see it as an expression and validation of a proabortion mentality that increasingly attempts to dignify itself with the protection and support of politicians and laws so as to expand the incidence of abortion and encourage its use.

However, to pass now to the language of the bill or to the concerns that we have dealing with the substance, first of all, public order and effective law enforcement. It is true that the demands of public order may at times require the Federal Government to assist local law enforcement authorities when they are unable to deal with a threat to life and property, but H.R. 796 is not directed at

such threats. It is directed against those who protest peacefully and nonviolently at facilities where unborn children are killed. Nor have local authorities been hesitant to enact and enforce laws against protesters who physically block access to such facilities or trespass on private property.

I think the point that we are making here is that the bill itself has a chilling effect on prolife demonstrators because it is aimed exclusively at them and because it brings in such heavy threats of criminal penalties and of civil penalties as well.

The second area that we are concerned about has to do with protecting civil liberties. Few would deny that our first amendment rights of freedom of speech, freedom of worship, and freedom of assembly are among the most basic of our constitutionally grounded civil liberties and that these rights belong to people on both sides of the abortion debate. Yet these rights are increasingly threatened in the abortion context, sometimes with the indifference of government and sometimes disturbingly with its active support.

We list in our testimony a number of instances where prolife groups or prolife institutions have been threatened or, as we feel, unjustly punished in regard to prolife activities. The point is, we are here to speak of protecting people against intimidation in the exercise of their civil liberties.

Therefore, we want to speak of the most basic liberties proclaimed in the Bill of Rights. Those liberties, we feel, are under attack, sometimes even at the hands of government officials. H.R. 796's transparent attempt to curtail public demonstrations at abortion clinics is a particular danger to the rights of public assembly and free speech guaranteed under the first amendment.

What Prof. Thomas Emerson of Yale University Law School has said of these rights is particularly true of prolife protests in this age of proabortion media bias, and I quote Professor Emerson: "The public assembly, in whatever form, is an indispensable feature of our system of freedom of expression because it does not depend upon the mass media of communication, which are controlled by the Establishment groups in the society. This form of protest is available to the poor, the underprivileged, and the minorities. It thus helps to preserve some semblance of a 'marketplace of ideas' in a system otherwise dominated by the mass media."

Mr. SCHUMER. Reverend, I am going to have to go vote, if you want to sum up in another minute or two, because we are going to try to keep each of the witnesses to the 5-minute rule.

Reverend MCHUGH. OK.

Mr. SCHUMER. I see from your testimony you have quite a bit left to go.

Reverend MCHUGH. By our analysis, the sponsors of this bill have misconceived the legal and moral reality of abortion. Along with millions of other Americans, the Catholic bishops of the United States affirm that abortion is a grave wrong. It violates the most fundamental right any human being has, the right to exist, and in more recent constitutional jurisprudence abortion has been called a liberty interest which government may burden in ways which are not undue, but abortion has never been escalated to a civil right, like the right to vote, the right and duty of citizenship that government should encourage and favor.

To prolife Americans, H.R. 796 is an outrage. Even those who claim the name prochoice should be embarrassed by the unjust discrimination contemplated by this desperate measure.

Thank you.

Mr. SCHUMER. Thank you, Reverend.

[The prepared statement of Reverend McHugh follows:]

TESTIMONY OF BISHOP JAMES T. MCHUGH

Committee for Pro-Life Activities
National Conference of Catholic Bishops

House Judiciary Subcommittee on Crime and Criminal Justice
June 10, 1993

I am Bishop James McHugh, the Bishop of the Catholic Diocese of Camden, New Jersey. I appear here today on behalf of the Committee for Pro-Life Activities of the National Conference of Catholic Bishops, of which I am a member. The NCCB represents the policies and interests of the Catholic bishops of the United States on a wide range of public issues. Of paramount importance to us is the defense of human life, from conception to natural death.

I want to be clear regarding my reasons for testifying at this hearing. While I have respect and admiration for those who give public witness to their pro-life convictions at abortion facilities, the Catholic bishops' Pastoral Plan for Pro-Life Activities does not directly address such activities. This document, unanimously endorsed by the bishops in 1985, calls for a three-pronged effort of education, pastoral care and public policy advocacy in defense of unborn children and their mothers; it condemns any use of violence in this cause.¹ Some bishops have taken part in peaceful public demonstrations; others have led public prayer near abortion facilities; still others prefer to focus on other efforts specifically urged in our Pastoral Plan.

¹National Conference of Catholic Bishops, Pastoral Plan for Pro-Life Activities: A Reaffirmation (U.S. Catholic Conference: Washington, D.C. 1985).

Thus we have unanimously condemned any resort to violence at abortion facilities, and we are not institutionally committed to the activities which sponsors say are prohibited by this bill. We can therefore assess its purpose and likely effect somewhat dispassionately. In making this assessment we are guided by our moral tradition on the sanctity of human life, the need to protect public order, and the legitimacy of public protest.

As Americans, too, we acknowledge a long tradition in our democracy of public protest and even civil disobedience by people committed to a variety of important causes. In this regard we need only look at the early labor demonstrations or the picket lines accompanying present-day strikes. We have also seen this phenomenon in the context of the war in Vietnam, the struggle for racial equality, the threat of nuclear proliferation, and a wide variety of domestic social issues. Concerned Americans have long shown their willingness to protest what they see as unjust and destructive policies, and even to place their own lives and wellbeing at risk.

H.R. 796 is difficult to reconcile with this American tradition. It shows no sign of recognizing that the defense of innocent life in its earliest stages is as valid and important a cause as any of the others I have mentioned. Instead, it singles out one group -- that of pro-life protesters -- for special penalties imposed on no one else, harshly discriminating against them based on the content of their beliefs.

The bill's sweeping intent was apparent in its original

language penalizing anyone who "obstructs, hinders, or impedes" access to an abortion facility. While the subcommittee has changed this language to refer only to those who "obstruct" access, this term is nowhere defined. Equally undefined is the bill's language about "intent to prevent or discourage" abortion.² H.R. 796 seems wrapped in the language of vagueness in order to avoid facing the reality of the escalating incidence of abortion in our society -- now at 1.6 million a year.

This legislation is not about helping overtaxed local law enforcement authorities to maintain public order. It is not about protecting constitutionally grounded civil rights. It is not about protecting medical personnel, or anyone else, from acts of violence.

This bill is about advancing abortion. It is an expression and validation of a pro-abortion mentality that increasingly attempts to dignify itself with the protection and support of politicians and laws, so as to expand the incidence of abortion and encourage its use. This mentality argues that every woman should be able to obtain an abortion at any stage of pregnancy, for any reason whatsoever including personal inconvenience, with no restrictions or qualifications of any kind, and with the support and subsidy of the government.

²This is a particularly glaring flaw in light of the fact that our Supreme Court finds a perfectly valid governmental interest in encouraging childbirth over abortion. Harris v. McRae, 448 U.S. 297 (1980); Mahe v. Roe, 432 U.S. 464 (1977). Under this bill, it seems private citizens could be imprisoned for having that same valid interest.

Indeed, the attention being given to H.R. 796 suggests that some lawmakers are more concerned to protect abortion on demand than to protect liberties explicitly proclaimed in the Bill of Rights.

Let me explain why we hold this to be true.

1. Public Order and Effective Law Enforcement

It is true that the demands of public order may at times require the federal government to assist local law enforcement authorities when they are unable to deal with a threat to life and property. But H.R. 796 is not directed at such threats. It is directed against those who protest -- peacefully and nonviolently -- at facilities where unborn children are killed. Nor have local authorities been hesitant to enact and enforce laws against protesters who physically block access to such facilities or trespass on private property.¹

If anything, state and local enforcement of ordinances against protests at abortion facilities has been marked by unusual vigor and sometimes by unjustifiable brutality. In fact, brutality inflicted on pro-life protesters by police in Los Angeles, West Hartford and Atlanta prompted Congress in 1989 to call on local law enforcement bodies to stop using unnecessary

¹The Florida legislature, for example, recently identified 13 different crimes with which such protesters could already be charged in that state; shortly afterwards, Florida's House of Representatives approved a bill defining seven new criminal charges in this area.

force against nonviolent protesters.⁴ H.R. 796 sends the opposite message: that the federal government must now move in, because local agencies have not enforced their criminal statutes aggressively enough against pro-life protesters.

2. Protecting Civil Liberties

What of the need to protect constitutional rights? Few would deny that our First Amendment rights of freedom of speech, freedom of worship, and freedom of assembly are among the most basic of our constitutionally grounded civil liberties -- and that these rights belong to people on both sides of the abortion debate. Yet these rights are increasingly threatened in the abortion context -- sometimes with the indifference of government, and sometimes, disturbingly, with its active support:

- Atlanta police recently had to pay a settlement to 19 pro-life protesters who were wrongfully arrested and jailed for simply praying near an abortion clinic; this police department will have to modify its field manual so officers understand First Amendment rights.⁵

- Disruption of religious services, desecration of the Eucharist, and vandalism are now accepted tactics among some who

⁴135 Cong. Record (Sept. 19, 1989), page S. 11357. See Phil Kuntz, "Anti-Abortion Protest Groups Win Help From Congress: Lawmakers order all communities to enforce ban on manhandling of peaceful demonstrators," Congressional Quarterly, October 21, 1989, pages 2793-5.

⁵Joyce Price, "Pro-lifers' arrest triggers training change for police," Washington Times, May 27, 1993, page A3.

protest against the Catholic Church's pro-life stand in New York and other cities. Recently, those seeking to interfere with peaceful pro-life gatherings at Catholic churches in Massachusetts poured glue into the locks of five churches and parish buildings.⁶ In Virginia a symbolic display of crosses, commemorating the unborn children killed every day by abortion, was uprooted and burned by abortion advocates.⁷

- Recent congressional proposals on abortion betray a troubling tendency to value the expansion of abortion practice over genuine rights of conscience. The new reauthorization bill for the Title X family planning program will require grantees to counsel and refer for abortion or ensure that this is done by others. The "Freedom of Choice Act," recently approved by the full House Judiciary Committee, is designed to force public hospitals to provide abortions -- although the bill's sponsors admit that such coercion was never required by Roe v. Wade. And the Clinton Administration recently announced plans to restore funding to international family planning programs that promote abortion, and to organizations that support population programs using coerced abortion and involuntary sterilization.

If we are to speak of protecting people against intimidation in the exercise of their civil liberties, let us speak first of the most basic liberties proclaimed in the Bill of Rights. Those

⁶James L. Franklin, "Choice Activists Blamed in Vandalism," Boston Globe, May 21, 1993, page 17.

⁷Mel Oberg-Olmi, "Vandals destroy symbolic billboard message," Richmond Times-Dispatch, April 18, 1993.

liberties are under attack -- even at the hands of some government officials. H.R. 796's transparent attempt to curtail public demonstrations at abortion clinics is a particular danger to the rights of public assembly and free speech guaranteed under the First Amendment. What Professor Thomas Emerson of Yale University Law School has said of these rights is particularly true of pro-life protests in this age of pro-abortion media bias:

The public assembly, in whatever form, is an indispensable feature of our system of freedom of expression because it does not depend upon the mass media of communication, which are controlled by the Establishment groups in the society. This form of protest is available to the poor, the underprivileged, and the minorities. It thus helps to preserve some semblance of a "marketplace of ideas" in a system otherwise dominated by the mass media.⁸

If some law enforcement officials now are ignorant of or indifferent to the First Amendment rights of peaceful pro-life protesters, how much worse will that situation become if Congress enacts new federal penalties against any protester that a clinic owner claims is "obstructing" the conduct of his business? Such new initiatives can only encourage greater infringement of First Amendment rights, to the detriment of our society.

3. Protecting Medical Professionals

H.R. 796's focus on protecting abortion facilities, under

⁸Thomas Emerson, "The Right to Protest," in Norman Dorsen (ed.), The Rights of Americans: What They Are -- What They Should Be (Vintage Books 1972), pages 208-9.

the heading of "reproductive health services," is puzzling. According to the American Medical Association, violence against health professionals is a serious problem in other contexts -- ranging from "animal rights" protests, to a recent shooting in a Los Angeles emergency room, to the stabbing of a Chicago nurse with a syringe carrying HIV-infected blood'. Yet only abortion facilities are singled out for special treatment -- and those seeking to discourage abortion are unconstitutionally singled out for new penalties, based on the content of their message.¹⁰

The Supreme Court that handed down Roe v. Wade did indeed draw a clear distinction between abortion and all other medical procedures -- but it is not a distinction that helps this bill. "Abortion is inherently different from other medical procedures," said the Court, "because no other procedure involves the purposeful termination of a potential life."¹¹ How truly strange it would be if this procedure, above all others, were to call forth the special protection of our federal government.

Most doctors know the same truth alluded to by the Court. That is why so few doctors are willing to become abortionists, leading pro-abortion groups to complain about a decline in real "access" to abortion. It is utter nonsense to claim that protests by pro-life activists constitute the only serious reason

⁹ Editorial, American Medical News, April 2, 1993, page 15.

¹⁰See Michael W. McConnell, "Free Speech Outside Abortion Clinics," Wall Street Journal, March 31, 1993, page A15.

¹¹Harris v. McRae, 448 U.S. at 325.

for the shortage of abortion practitioners -- the reasons run broader and deeper. The medical profession's own periodicals report that medical students who favor abortion are disturbed by "the perceived ostracism and marginalization of abortion providers, both within and outside the medical community." As one such periodical recently observed: "The sheer unpleasantness of the abortion procedure -- the dismemberment of a developing embryo or fetus -- has tempered the enthusiasm of many students."¹² As well it should.

One other difference between abortion and other medical procedures should be of interest to this committee. Besides being uniquely dangerous to the unborn, the abortion industry is also uniquely free of scrutiny and regulation in regard to its very real dangers to women. Each month we hear new stories about women who have been exploited, harmed or even killed by unscrupulous abortion practitioners. In the wake of recent criminal charges against New York abortionist Abu Hayat, New York state health officials noted that his case is only the tip of the iceberg: At least eight other doctors specializing in abortion have been cited for negligence in New York alone in recent years, but state officials say they lack adequate funding or staff to investigate most of these claims.¹³ Even a local abortion

¹²Erik L. Goldman, "Med Students React to Anti-Abortion Tactics, Violence -- Perceive Established Medicine as Indifferent," Ob. Gyn. News, May 15, 1993, page 19.

¹³David Kocieniewski, "Officials Say This Wasn't a Rare Case," Newsday, February 23, 1993, page 3. Also see: Editorial, "Send Him Away -- But Will the State Make Probing Charges Against

clinic owner has noted in this context that "in the abortion field where women are vulnerable and in a crisis situation, it's easier to get greedy and unethical physicians."¹⁴

The pro-life women and men who stand outside abortion clinics, in the hope of giving information on abortion and other options to women as they enter those facilities, may not be popular with some Americans. Their appeals to women to reconsider their abortion decision may even at times be emotional. "Clinic escorts" may find them bothersome and claim their actions "obstruct" open access to abortion. But of one thing I am sure: Lawmakers have no reason to condemn these activists, much less imprison them for their efforts -- especially when those lawmakers obstruct efforts to ensure that women receive good information on alternatives to abortion once they get inside the clinics. Extreme legislation like the "Freedom of Choice Act," as recently approved by the Judiciary Committee, constitutes just such an obstruction.

By any analysis, the sponsors of this bill have misconceived the legal and moral reality of abortion. Along with millions of other Americans, the Catholic bishops of the United States affirm that abortion is no "right" at all, but a grave wrong. It violates the most fundamental right any human being has -- the right to exist. But even if abortion were the kind of reality

Does A Priority?", Newsday, February 24, 1993, page 44.

¹⁴New York Post, February 23, 1993.

that some members of the Supreme Court seem to imply it is, H.R. 796 would be based on a false premise. Even under Roe v. Wade, abortion was at best seen as a medical procedure, an issue between a woman and her doctor into which government may not intrude the arm of the criminal law. In more recent constitutional jurisprudence, abortion has been called a liberty interest, which government may "burden" in ways which are not "undue." But abortion has never been a "civil right" like the right to vote -- a right and duty of citizenship that government should favor and encourage. Nor has it ever been an entitlement that government has a duty to provide or facilitate. Thus government has no special right or duty to penalize private citizens who try to dissuade others from having or performing abortions -- particularly when no such penalties are brought against protesters on the other side of the same issue, or against protesters involved in any other controverted issue in our pluralistic society.

To pro-life Americans, H.R. 796 is an outrage. Even those who claim the name "pro-choice" should be embarrassed by the unjust discrimination contemplated by this desperate measure.

Mr. SCHUMER. We are going to have to take a brief break because we have two votes, and we will come back as quickly as possible and resume the testimony.

We are in recess.

[Recess.]

Mr. EDWARDS [presiding]. The subcommittee will come to order.

We welcome the panel, and our first witness speaking for the panel is Rabbi Levin.

Welcome.

**STATEMENT OF RABBI YEHUDA LEVIN, EXECUTIVE
DIRECTOR, GET FREE, BROOKLYN, NY**

Rabbi LEVIN. Thank you very much.

I am sorry that Congressman Schumer is not here at this moment.

Mr. EDWARDS. He will be here in a moment.

Rabbi LEVIN. It is my understanding that the notice that was sent out about this hearing is a notice that referred to it as an oversight hearing, which means it is at the discretion of the witnesses to discuss anything which they feel has to do with rule 796. I feel there was a certain amount of—oh, I am happy that Congressman Schumer is here to hear this. After all, he is my neighbor.

Congressman, what I was saying was, it was my understanding that the notice dealing with this hearing referred to it as an oversight hearing, which means that there should be latitude of the witnesses to discuss whatever they feel has to do with rule number 796, and to some of us—to many of us here on the panel today, our religious standards and values formulate the way we look at things, look at legislation, and I think it very much has an impact.

Looking back at some of the testimony and some of the cross examination that the witnesses went through the first time around when Congressman Edwards was asking if you believed God was talking to you, to Mr. Terry, et cetera, I see that, if anything, the Congressmen were getting into discussions of religion, so I am sure that you will let my religious beliefs and statements color some of what I say here today.

Furthermore, I would state that when Planned Parenthood, Lawrence Tribe, and the abortion clinic owners testified the first time around, these are people who are definitely part of the mainstream of proabortion groups, and therefore, in fact, mainstream proabortion people did testify in the first hearing.

Now we are at a loss here, Congressman. We can't really even testify specifically on H.R. 796 because of the fact that in discussions that I held both yesterday and today with your esteemed counsel, she indicated to me, when I complained to her about the terminology "with intent to prevent or discourage" and the terminology having to do with obstructing, that this seems to be rather one-sided and that, in the interests of fairness, this bill should have applied at least—although, of course, we are in opposition to this bill under any circumstances—it should have applied to many proliferators who are harassed, threatened, physically, et cetera.

Mr. SCHUMER [presiding]. It does, Rabbi.

Rabbi LEVIN. Pardon me?

Mr. SCHUMER. It does. Reproductive services are what prolife people do as well.

Rabbi LEVIN. Again, I am just a simple Talmidist, I'm not a lawyer or a Congressman, but it shouldn't have to be so tenuous, Congressman Schumer. In other words, when we would like to communicate fairness, I think there are terminologies that we can use that would very quickly show how fair we are and how concerned we are about both sides being attacked.

Your counsel informed me, in effect, that probably the committee or the House is going to go along with the Senate version of the bill, which makes this whole thing sort of an exercise in futility because it shows that your side of the issue is basically seeing that this is drawn very narrowly as if perhaps to curry favor with the extreme proabortion groups who would be very dissatisfied if there would really be a showing of equality.

Nevertheless, I am very, very happy to be here and to make several points. One of the points is that the Orthodox Jewish community is the fastest growing community, I think, demographically in Judaism. As you well know, because of your district, with an average of 6 to 10 children, within the next two or three decades we are going to see an increasing high profile participation on the part of the traditionally Orthodox community, and they have very, very strong prolife considerations.

As law-abiding citizens, the Orthodox Jewish community, as many other good people of all faiths, might be impacted upon legislation which, in effect, communicates to our children and to our adults that the Federal Government and the bully pulpit of the Federal Government views legitimate protest outside abortion clinics, as a deeply felt religious expression, as a deeply felt moral expression, as something which is criminal, just like kidnapping, child molesting, adultery, et cetera.

Now if, in fact, Mr. Schumer—if, in fact, there would have been something in this bill which would have referred to some other types of protest which offend us very much—for instance, when militant homosexual groups like Act-Up or others come and surround St. Patrick's Cathedral and desecrate the host or threaten and disrupt religious gatherings, et cetera, I think that the Congress or the sponsors would be showing that there is an equal concern to all kinds of disruptive societal things.

Now, of course, as your counsel explained to me—

Mr. SCHUMER. You are going to have to wind up, Rabbi Levin.

Rabbi LEVIN. Well, time flies when you are having fun.

Mr. SCHUMER. A little more fun to wind up.

Rabbi LEVIN. OK, fine. It is nothing personal, Congressman.

Of course, the fact of the matter is that this is clearly designed to highlight that it is no longer politically correct or acceptable to protest. If religious people want to pray or say the rosary, then that is fine. But if you feel strongly enough about the issue that you want to hand over a leaflet or you want to stand and try to talk to somebody, for instance, Congressman Schumer—with this I'll conclude—if the cousin, the girl cousin, of that boy who recently divorced his mother—he has a cousin who is also having difficulty getting along with her mother, and she happens to be a minor, and this girl decides that she is going to have an abortion, and she is

5 miles away from the abortion clinic in her own house, and her mother says, "Wait, I'd like to talk to you about this before you leave," and stands in the threshold of her bedroom, and the daughter feels, "Hey, you're blocking me—you're obstructing me from getting an abortion, and there's no parental notification law here, so, Ma, I'm going to have you arrested under this Federal law, and, not only will I do that, but now I can take you to a civil case, I can take you to a civil case where"——

Mr. SCHUMER. Your time is really up.

Rabbi LEVIN. Well, thank you for your courtesy and allowing me to finish.

[The prepared statement of Rabbi Levin follows:]

STATEMENT OF RABBI YEHUDA LEVIN
BEFORE THE
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE

June 10, 1993

As an Orthodox Rabbi who is keenly attuned to the centrality of Jewish laws concerning family values, and the sanctity of life itself, I thank Congressman Sensenbrenner for seeing to it that this additional session is being held. As one who works to obtain religious divorces for Jewish women, I am occasionally confronted by problems such as domestic violence and child abuse. To my way of thinking, there is a direct correlation between the pro-life philosophy conveyed by our religious and educational institutions, and the relatively low incidence of child abuse in our community as opposed to national statistics.

I believe that facilitating abortion, which in many cases is performed for reasons of convenience, or because of shame or societal pressures, leads to an insensitivity towards women and children. This does not mean that everyone who is pro-abortion is automatically going to beat his wife or girlfriend, nor does it mean that every pro-abortion woman is going to abuse her children. I am suggesting that there seems to be a correlation between the increasing legitimization of feticide, and a callousness that is developing towards violence against children and the most defenseless in our society.

I am here today to declare that those concerned with the sanctity of life are not merely Randall Terry and Operation Rescue, but that there is a rainbow coalition of pro-lifers consisting of men and women, black, white, and yellow; Jewish, Christian, and Moslem, etc. I have often been authorized to speak on behalf of the Rabbinical Alliance of America, as well as the Union of Orthodox Rabbis of America and Canada. I've represented them specifically at The March for Life, where I have often read statements reaffirming the strong pro-life position of over 1500 Orthodox Rabbis, their congregants and the religious schools which they lead.

Many in our community are concerned that the Freedom of Access to Clinic Entrances bill is designed to further stifle legitimate dissent on the issue of abortion. This is a fear which I share, and that is why I am here today.

Mr. SCHUMER. You were getting into more and more examples. I don't think—

Rabbi LEVIN. Just one.

Mr. SCHUMER. Yes. I would say you haven't talked about the bill.

Reverend Mahoney, let me just say—oh, no, sorry. It is Reverend or Mister?

Rev. PATRICK MAHONEY. Reverend.

Mr. SCHUMER. Rev. Patrick J. Mahoney is director of the Christian Defense Coalition, a social activist group committed to taking back and reforming America. He is also a national leader with Operation Rescue.

Your entire statement will be read into the record, and you have the allotted time to summarize your remarks, read from them, whatever you wish.

STATEMENT OF REV. PATRICK J. MAHONEY, DIRECTOR, THE JOSHUA PROJECT, AND NATIONAL SPOKESPERSON FOR THE CHRISTIAN DEFENSE COALITION

Rev. PATRICK MAHONEY. Thank you, Mr. Schumer, and I would like to thank Mr. Sensenbrenner for giving us the opportunity to be here.

In my written record I talk about prochoice violence against prolife activists. Since it has already been entered, I won't deal with that today but will specifically talk about the bill and what it addresses.

I want to say, Mr. Schumer, that I take issue with the fact of characterizing us not as mainstream. Over 70,000 people have been arrested at Operation Rescue events, with 300,000 participants nationwide endorsed by every major religious, conservative, Christian, and Jewish, and Catholic group in America. So we are certainly not out of the mainstream.

I would like to set the record straight, too, of the mischaracterization that people who are involved in Rescue are somehow violent, crazed, religious, fundamentalist. Nothing, Mr. Schumer, could be further from the truth. We are ordinary American citizens who cherish this country, who believe in the sanctity and dignity of human life, and believe that abortion is the taking of an innocent human life, and the testimony that I heard several weeks ago—chilling, testimony, disturbing testimony—linking participants of Operation Rescue with horrifying acts is simply not the case.

Mr. SCHUMER. You are not including blockading in horrifying acts, I presume.

Rev. PATRICK MAHONEY. Well, that Mr. Schumer, brings me to my next question, a question to you. I find it difficult to believe, and perhaps you can clarify for me, is this committee—are you linking a person who gently sits in front of an abortion clinic door, praying the rosary, reading a Bible, or meditating—is that a violent act, in your mind?

Mr. SCHUMER. Yes. That is physically obstructing and would be within the ambit of the bill. Physically obstructing. That is what the bill talks about.

Rev. PATRICK MAHONEY. And that, in your mind, sir, would be a violent act?

Mr. SCHUMER. No, it doesn't have to be to be under the ambit of the bill.

Rev. PATRICK MAHONEY. So then people sitting peacefully in front of a clinic door, it is not a violent act, in your mind?

Mr. SCHUMER. It is physically obstructing. It fits within the ambit of the bill. Whether it is a violent act or not is irrelevant to this bill or this hearing.

Rev. PATRICK MAHONEY. OK. Thank you, sir.

Then I oppose this bill for several reasons. Number one, to link a person, a 56-year-old grandmother praying the rosary gently and quietly in front of a clinic door and quoting your bill, saying she should not go to jail for more than 1 year, when we have real criminals walking the streets of America in your district, sir, that is an outrage and a mockery of what this country stands for.

You also said if anything in your bill chills civil rights. I would say it already has. Our office and Operation Rescue has received hundreds of phone calls of people asking, "If this bill passes, can I carry a sign? May I go out and pray?"

Mr. SCHUMER. You can tell them yes.

Rev. PATRICK MAHONEY. Well, your testimony then disagrees, sir, with the Attorney General, who could not make that same commitment, and when Ms. Reno testified in the Senate hearing and was asked that same question, Mr. Schumer, she could not be so sure as you were. So we seem to have a difference between what the Attorney General, the number one law enforcement officer in this country, is saying and what the chairman of this committee is saying.

Mr. SCHUMER. Two different bills, Reverend Mahoney.

Rev. PATRICK MAHONEY. The enforcement of it will be through the Justice Department though on both the House and Senate side, won't it, Mr. Schumer?

Mr. SCHUMER. Reverend Mahoney, unlike maybe some of the people in your movement, the Attorney General is supposed to enforce what the law is, so it won't matter. It matters which bill passes.

Rev. PATRICK MAHONEY. I agree, sir, but the Attorney—

Mr. SCHUMER. This bill does nothing—I defy you to read me a sentence in it that would stop carrying a sign, peaceful protest, praying the rosary, not in front of the door but alongside the door so someone could enter. Find me a line in the bill that stops that.

Rev. PATRICK MAHONEY. I will.

Mr. SCHUMER. Good.

Rev. PATRICK MAHONEY. But let me just say, the Attorney General didn't agree with you, and that was frightening to me.

"Whoever"—and I'm quoting—"with intent to prevent or discourage any person." That is why everyone goes out to demonstrate at an abortion clinic, Mr. Schumer. Everyone goes out with the intent to prevent or discourage a person from killing another human being.

Mr. SCHUMER. Reverend Mahoney, I have to—and I'll give you another minute—it says "and physically obstructs." You can't just go out with the intention, you also have to physically obstruct, and I have to tell you, I get a little tired—a little tired—of

mischaracterization which is not done, in my judgment, with good faith.

Go ahead, you may take an extra—

Mr. SENSENBRENNER. If the chairman will yield, I think the way this bill is drafted is, if you are standing on the sidewalk in front of an abortion clinic, and someone who is going into the clinic to have an abortion is walking down the sidewalk, and you hand or attempt to hand that person a leaflet that says, "Don't kill your baby; don't go into the clinic," you can be prosecuted.

Mr. SCHUMER. I would just answer him, and this is really for you to testify, and I'll be quiet. I think if you asked a hundred people who had no views on prolife/prochoice if handing a leaflet is physically obstructing, they would all say no, but we will be happy to put report language in the bill that makes that very explicit.

I would like you to address the issues of the bill.

Rev. PATRICK MAHONEY. Sure.

You said the hundred people, except the Attorney General, who did not make the same—

Mr. SCHUMER. No, you are mischaracterizing her, Reverend. Read me her words.

Rev. PATRICK MAHONEY. I will be happy to send you her testimony and what she said.

Mr. SCHUMER. I heard what she said. You are mischaracterizing it.

Rev. PATRICK MAHONEY. OK. That is where good people can agree or disagree.

The final point that I would like to make is, to target one group for similar conduct of another group violates the spirit of what America is. If an Act-Up person sits in front of a medical facility because not enough funding is given for AIDS research, a Greenpeace person goes out on a lifeboat to prevent a launch from a submarine—similar acts, similar contact—Mr. Schumer, I have been in jail for many months sometimes for just praying on a public sidewalk. This bill affects me personally. I have a beautiful wife and three wonderful children. I am looking at a year of my life for simply sitting in front of a door.

Sir, that is not what this country is all about. There is adequate remedy of law, the *Bray* decision. Not one Federal judge—and I'll close on this—has vacated his order. *Bray* did nothing in terms of relieving Federal court orders. Not one judge has vacated it.

Mr. SCHUMER. Thank you, Reverend.

[The prepared statement of Rev. Patrick Mahoney follows:]

TESTIMONY OF REVEREND PATRICK J. MAHONEY
DIRECTOR OF THE JOSHUA PROJECT/CHRISTIAN DEFENSE
COALITION NATIONAL SPOKESPERSON

I would like to thank the members of this committee particularly Congressman Sensenbrenner for offering us the opportunity to speak here today. For the past 16 years, I have been involved in the struggle for social justice and equality. That struggle has included establishing food pantries for the hungry, sleeping in garbage dumpsters to establish shelters for the homeless, working with persons struggling with alcohol and chemical dependencies, developing programs for women subjected to domestic violence, shipping medical supplies to war torn Central America, and being the first American to rebuild border Irish roads with Irish farmers.

However, the single most important issue Katie and I have been involved with is maintaining the dignity of human life in the pro-life movement. For the past four years, Katie and I have been national spokespersons for Operation Rescue. It is in that role that we are here today. Our purpose is to discuss a topic that has never been given a public hearing. That issue is pro-choice violence, harassment, intimidation, and physical assaults against pro-life activists.

Sadly, only one side of this debate has been heard in the public square. This committee listened to testimony several

weeks ago from clinic workers who were attacked and harassed. We want to make it clear that Operation Rescue has never condoned these kinds of activities. With over 70,000 arrests, Operation Rescue has never once been linked or connected with any acts of violence. It is now time to hear personal testimonies from pro-life activists which will tell the complete story. These incidents are regular occurrences that will offer this committee a representation of what is happening to pro-life activists across America. Here is a random sampling of what has gone on in my life.

*In 1988, I was involved in the nation's first pro-life referendum. During the three months of the campaign, my church was defaced and desecrated on numerous occasions. Pro-choice graffiti was sprayed across the outside of the building and a large cross on the inside of the sanctuary was defaced. Our family received repeated physical threats some were death threats. Callers went on to state that they would run our family out of town and bring personal harm on my children. After one such threat, a person broke into our home and confronted our baby-sitter.

*In 1987, I led an effort to make Miami abortion free when the Pope visited. During that time, I received constant threats. My office was broken into and a dead bird was placed inside along with pro-choice slogans. A broken cross was placed on the front porch of my office, again with pro-choice threats.

*I speak on a regular basis across the country. On many speaking tours, I have been subjected to malicious attacks, threats, and harassment. Some notable examples include being attacked at the New York Hilton in 1989. I was surrounded by over 200 pro-choice supporters and repeatedly hit with coat hangers. The NYPD had to come in and rescue us and we were whisked away in the mayor's personal car. In Washington D.C. in 1989, I sat in my automobile while pro-choice supporters slashed the car tires. I was also in a van that had the front windshield smashed in by abortion rights activists at the Democratic National Convention in 1992. Wine and urine was thrown in my face while pro-choice supporters attempted to spit blood like substances on us.

*Church services I have been involved with have been frequently disrupted and church buildings desecrated. While speaking at a church service in 1990, SWAT Team members in full riot gear lined up along the back of the church. They were in place because pro-choice supporters had threatened us with syringes infected with AIDS contaminated blood. While speaking at church services in Wichita in 1991, someone phoned in a bomb threat. Four-hundred people had to be evacuated from the sanctuary while a complete search was made. During the Democratic Convention this past summer, pro-choice supporters blocked access to a Catholic church where a pro-life rally was taking place. A large number were arrested by the NYPD.

I realize this committee is seeking a compassionate and just solution to end abortion related violence. In striving for a fair decision, this committee must take into account the rising tide of pro-choice violence and realize it impacts the civil rights of thousands of pro-life supporters. Until today, only half the story has been told.

I want to close by saying this Bill is bad law for two major reasons. First, it links passive and peaceful demonstrators who practice non-violent civil disobedience with persons who are involved in arson, assault, and other violent acts. A person who sits in front of a clinic should not be connected with clinic bombers in any legislating efforts.

Second, it imposes harsh sanctions on persons who support a pro-life position and violate the provisions of this House Bill. yet, it ignores pro-choice supporters who harass, assault, and attack pro-life activists but receive no sanctions.

To discriminate and target one group because of their political and religious beliefs, violates all that Americans cherish. It is particularly offensive when the group doing the discriminating is the United States House of Representatives.

Mr. SCHUMER. Ms. Mahoney, you have your—let me just say, Ms. Kathleen Mahoney. She is the national spokesperson for Operation Rescue, which is a Washington-based prolife group.

Ms. Mahoney, your entire statement will be read into the record, and you have 5 minutes to read it, whatever you wish.

**STATEMENT OF KATIE MAHONEY, NATIONAL SPOKESPERSON,
OPERATION RESCUE, WASHINGTON, DC**

Ms. KATIE MAHONEY. OK. Thank you for the opportunity to share my concerns and my distress over this radically discriminatory bill. I am very grateful for the chance to express what I feel is the heart of so many average Americans who are involved in this volatile and difficult subject of abortion, and they are likewise deeply disturbed at the prospect of your extreme legislation.

Let me just say that I represent literally thousands of Operation Rescue women who refuse to allow the issue of abortion to be characterized as simply a women's rights issue, it is not, it is profoundly so a human rights issue. Being a woman, I know that it can be very, very difficult to find yourself in an unplanned pregnancy, but there is a child that is also involved here.

We don't solve social problems, no matter how severe, by killing in a humane society. Though often it is more costly and time consuming, we do what is needful and true to provide true help, not quick easy fixes such as abortion.

The reason that I say that is, this is where Operation Rescue comes in. We are there to help. We have been continually painted as hateful, violent, and ignorant. By our detractors we have been assigned the role of women haters, controlled by men, religious crazies, and so on, every other kind of foolish portrayal that would fit the degrading tactics of their image agenda instead of the humane, caring individuals which we are.

Contrary to proabortion image handlers, we do not just show up at the clinic door, but we seek to truly help women in crisis pregnancies by providing tangible support—everything from counseling and medical and financial help to giving clothes, maternity and baby clothes, and so on. Many of us have taken women into our homes, as have Pat and I. Yes, we do care for the born as well as the unborn. We have worked in food pantries and soup kitchens, and most of the rescuers that I know give much of their lives to public service.

The price tag that comes along with Rescue activity is disproportionately higher than any other form of social activism that is engaged in in our present culture which many of those that have testified before me have stated. We understand that civil disobedience has a cost, and we count and accept that cost which we risk for the sake of human lives, but again, however, Mr. Schumer, being singled out, which you will hear again and again today, as though we were the only group that uses this rich American tradition of the civil disobedience of unjust laws is blatant discrimination.

Mr. SCHUMER. Ms. Mahoney, let me interrupt you. You are not being singled out. Last year, this committee had a similar bill with higher penalties against animal rights activities who did the same thing at universities.

Ms. KATIE MAHONEY. Well, I have never seen them prosecuted in such a way, and I feel it is an outrage.

Unfortunately, I don't feel that it is surprising, because political expedience has come to rule the day in this Capitol too often, not the freedom and right to dissent afforded us in the Constitution, and let me just state, my husband had a number of specifics written into his testimony that he didn't get into, but we too are harassed, intimidated, and constantly pressured by abortion advocates. We have been through much in our personal lives that I am not going to get into because I want to get moving along here, but let me just say to you that we have always accepted this as part of the high cost of being involved in a very volatile issue. We know this is an emotional and difficult issue, and we are willing to weather these attacks because we believe we are standing for a just cause.

While we try to protect our own children from these onslaughts, they are aware that daddy sometimes may be in danger, and it is a constant pressure. So the door swings both ways. This is just something that is a very divisive subject in our country.

There is sufficient remedy of law now to deal with the abortion dissent at clinics. The site of a Rescue finds average Americans not terrorists. We have grandmothers praying the rosary, professional men and women alongside blue-collar workers. We are kneeling, we are praying, we are singing quietly, moms, dads, from every walk of life and social strata.

There are also sufficient laws in place to deal with those that harass and physically harm others. As we heard the testimony—I was here a couple of weeks ago—some of those things were startling, I had never heard of those things, and I think they were horrendous, that some of these prochoice people have suffered, and there are laws that have already taken care of those types of things, and I would like to emphatically state that those who support this legislation have done a superb job, in my opinion, of blurring the issue of a, quote, blockading law—i.e., freedom of access to clinic entrants—with violence, harassment, bombings, and physical attacks. There is no connection between the two, and we have shown again and again that Operation Rescue requires participants to be peaceful and nonviolent.

Mr. SCHUMER. You know, Ms. Mahoney, that this law that you are addressing only deals with blockade, not with those other issues of violence.

Ms. KATIE MAHONEY. But my point in being is, the testimony that was brought forward before constantly, and also the Attorney General, when she would bring her testimony forward, it was always, most often, talking about physical attacks, harassment, bombings. Very seldom, if ever, did they talk about blockades. So what I am saying is, they are blurring the two of them together to make it look like they are the same.

Quickly let me just say, Benjamin Franklin stated at the Constitutional Convention when we first began this great form of government that government would be a blessing if it was well administered. He said, further, that it can only end in despotism when the people shall become so corrupted as to need despotic government, being incapable of any other.

Let us not become so corrupt in our administration of government that we allow the unbiased truth to be shrouded for the pleasing of certain groups of power. It is so vital that our laws reflect the dignity of our great form of government, equal justice under law. You are capable of the delicate balance of rights and dissent in this issue that so divides our Nation. Please administer well, and please reject this bill.

Mr. SCHUMER. Thank you, Ms. Mahoney.

[The prepared statement of Ms. Katie Mahoney follows:]

TESTIMONY OF KATIE MAHONEY

Thank you for the opportunity to share my concerns and distress over this radically discriminatory bill. I am very grateful for the chance to express what is the heart of so many average Americans who are involved in this volatile and difficult subject of abortion, and are likewise deeply disturbed at the prospect of your extreme legislation.

I represent literally thousands of women, who refuse to allow the issue of abortion to be characterized as simply a women's rights issue. It is not- it is, profoundly so, a human rights issue. Being a woman, I know that it can be very, very difficult to find yourself in an unplanned pregnancy- but there is a child that is also involved here. We do not solve social problems, no matter how severe, by killing. In a humane society, though often it is more costly and time consuming, we do what is needful and provide true help, not quick "easy" fixes such as abortion.

This is where Operation Rescue comes in. We have been continually painted as hateful, violent and ignorant. By our detractors we have been assigned the role of "women haters, controlled by men, religious crazies" who have no concept of life on this planet and every other kind of foolish portrayal that would fit the degrading tactics of their image agenda. Abortion advocates have largely succeeded in convincing many that we are what they say we are, because we were not out there to project an image or appear chic with politically correct sit-ins, but to simply save the lives of living human beings and expose the ugly reality of abortion.

Contrary to the image handlers, we do not just show up at the clinic door, but we seek to truly help women in crisis pregnancies by providing tangible support - from maternity & baby clothes, to medical & financial help, and counseling. Many of us have even taken women in need into our homes. Yes, we do care for the born as well as the unborn. I myself have worked in food pantries and served in soup kitchens. It is in fact, largely pro-life church groups that help to run the food pantries and shelters across our nation. Most of the rescuers I know give much of their lives to public service.

These people that rescue must really care and believe in what they do, for the price tag that comes along with rescue activity is disproportionately high to any other form of social activism that is engaged in, in our present culture. We do not take lightly the things such as loss of reputation, time and money, jail sentences, and the pain suffered at the hands of the, sometimes over zealous, law enforcement officials and abortion advocates. We understand that civil disobedience has a cost, and we count and accept that cost which we risk for the sake of human lives.

However, being singled out as though we were the only group that uses this rich, American tradition of the civil disobedience of unjust laws, is blatant discrimination and an outrage! Unfortunately, it is not surprising. Political expedience has come

to rule the day in this capitol, not the freedom and right to dissent afforded us in the constitution.

We too are harassed, intimidated and constantly pressured by abortion advocates. Life has not been easy since we've been involved in this issue - even before we began rescuing. As my husband shares in his testimony, we have had a regular flow of threats and insults. We no longer put Pat's name in the phone book, nor publish our number in his name. We have always simply accepted it as part of the cost of standing up for a very volatile cause. And we are willing to weather the attacks because we believe we are standing for a just cause. While we try to protect our children from it, they are aware that Daddy may sometimes be in danger. It is a constant pressure.

There is sufficient remedy of law now to deal with the abortion dissent at clinics. The sight of a rescue finds average Americans, not terrorists - grandmothers praying the rosary; professional women and men kneeling; doctors, lawyers, alongside blue collar workers singing quietly; moms, dads - people from every walk of life and social strata. They are already sacrificing to show their fervent grief over the tragedy of abortion as they peacefully and prayerfully sit, and risk State consequences.

There are also sufficient laws in place to deal with those that harass and physically harm others. I would like to emphatically state that those that support this legislation have done a superb job of blurring the issue of a "blockading" law (ie: Freedom of Access to Clinic Entrance) with violence, harassment and physical attacks. There is no connection between the two and we have shown that Operation Rescue requires participants to be peaceful and non-violent. Whatever acts that individuals do at other times when they are not accountable to O.R. cannot and should not be justly remedied by crushing non-violent and peaceful protest.

Benjamin Franklin stated at the constitutional convention that began our great form of government, that "government would be a blessing if it was well administered"; he said further that "it can only end in despotism... when the people shall become so corrupted as to need despotic government, being incapable of any other." Let us not become so corrupt in our administration of government that we allow the unbiased truth to be shrouded for the pleasing of certain groups of power. It is so vital that our laws reflect the dignity of our great form of government - EQUAL JUSTICE UNDER LAW.. We are capable of the delicate balance of rights and dissent in this issue that so divides our nation. Please, administer well ... and reject this bill.

Mr. SCHUMER. Now we have Mr. Stephen Wood. He is the president and executive director of the Family Life Center International, an organization which supports a range of prolife activities.

The same rules for you, Mr. Wood, as for everybody else.

STATEMENT OF STEPHEN WOOD, PRESIDENT AND EXECUTIVE DIRECTOR, FAMILY LIFE CENTER INTERNATIONAL, INC., PORT CHARLOTTE, FL

Mr. WOOD. Thank you, Mr. Chairman and members of the committee.

I am a Florida prolife leader. National attention has been focused on my State stemming from the act of violence committed outside of a Pensacola abortion clinic. While there is no excuse for the actions of Michael Griffin, neither is there any excuse for threats, acts of vandalism, and violence by proabortion advocates in Florida.

I have personally received hate mail and hate calls. I have been screamed and yelled at while driving in my car with preschool children, all because I had a prolife bumper sticker on my car. While I was a Presbyterian minister, I received a threatening message on my church answering machine saying, "I would like to blow your ass up."

There has been slanted and one-side reporting regarding acts of violence by proliferers. As we all know, there are two sides to every story. The press and media have generally focused on one side. A slanted public perception has grown up around this single-sided reporting.

I would like to speak to you today about a Florida abortion-related story that did not get statewide nor national press coverage. On Saturday, February 13 of this year, I was speaking at a prolife banquet for the Gainesville Right to Life organization. When I arrived, proabortion advocates were yelling and screaming on the sidewalk in front of the Holiday Inn where the banquet was being held. Some proabortion demonstrators entered the hotel and refused to leave the building when requested to do so by hotel security. They left after police arrived.

About halfway through my talk, we were informed that the offices of the Gainesville Right to Life had just been fire bombed. When I went to inspect the firebombing damage, I was shown a large rock about the size of a bowling ball that had been tossed at the office window in a previous attempt to assault the Right to Life office.

The Gainesville office which was fire bombed was responsible in the previous year for distributing approximately \$30,000 in food, clothing, and assistance to needy mothers and their children through volunteer efforts. Why would anyone want to use violence against such charity? Yet there are people in our State who do so.

The story of the Gainesville firebombing was not carried across the State of Florida. Following the Pensacola shooting, our State legislature moved into high gear towards passage of a bill designed to protect abortion clinics. We gave our Florida representatives copies of the local reporting on the Gainesville firebombing. Some representatives expressed surprise that they had never heard of the incident. We told them that vandalism and violence in the abortion controversy is not one-sided. I believe it is very informative that

the Florida Legislature did not feel it necessary to pass its bill following the Pensacola shooting.

The Freedom of Access to Clinics Act is a piece of legislation singling out one of the two groups of people in the abortion debate. A basic sense of fairness would dictate that prolife offices like mine, which is not involved in any form of reproductive health care, that also prolife workers, prolife meetings, and churches be protected if special legislation is passed to regulate actions in the heated abortion debate. If acts preventing and discouraging access to abortion clinics should be forbidden, why shouldn't they be forbidden outside of prolife banquets and prolife offices and churches and synagogues?

Mr. SCHUMER. You realize, Mr. Woods, that the bill does the same for prochoice offices, the same thing. Those that are not involved in reproductive services are not affected by this bill either if they are harassed.

Mr. WOOD. Well, for instance, my prolife office is involved in the abortion debate, and my office would not be protected.

Mr. SCHUMER. The bill is not intending to protect offices that are not involved in reproductive services. The reason I chose reproductive services as opposed to the word "abortion," which is in the Senate bill, was an attempt to be neutral, so that if your organization or Reverend Mahoney's or Rabbi Levin's or the Catholic bishops had an office that people were being led into to discourage them from having abortions, and the prochoice people were to blockade that office so people couldn't come in, this law would apply, and that was the intent. It was intended to be neutral in regard to reproductive services, not prolife, not prochoice. You will notice, the Senate bill has the word "abortion." We don't, explicitly because we wanted to be neutral.

Now if you think that the law ought to be expanded to harassment of all prochoice or prolife activities, as opposed to simply blockade—this bill is a very narrow bill; it is aimed at blockading reproductive service offices—maybe we should consider that, but if we do it, I assure you, it would be done neutrally and affect your office and NARAL—no; NARAL may do reproductive services—but some group that is prochoice that does not do reproductive services.

I am sorry. Take another minute, please.

Mr. WOOD. Well, Mr. Chairman, I respectfully disagree, because anyone, at least from the prolife side, reading this bill would say it is anything but neutral. I have just described to you significant events in Florida which are going on in the abortion debate.

Mr. SCHUMER. They have nothing to do with this bill, Mr. Wood.

Mr. WOOD. I disagree with that, because this bill would not be making progress if it were not for the Pensacola shooting and the situations of violence advocated around the abortion controversy. What I am saying is, this bill is explicitly singling out one of two sides in the abortion debate.

Mr. SCHUMER. You say it does, but it doesn't. Read the language.

Mr. WOOD. I have read the language quite carefully, and I repeat, my office, which is not engaged in reproductive health services, would not be covered. I have been the brunt of these. Churches I have served at have been the brunt of these.

Mr. SCHUMER. Mr. Woods, I wish we could talk rationally about this. Neither would a prochoice office that wasn't involved in reproductive services. You may think the law isn't broad enough, but it covers neither. It is not just aimed at not prolife offices, it is also aimed at not prochoice offices.

Mr. SENSENBRENNER. Mr. Chairman, you know, when the majority had their witnesses at the previous hearing, I did not interrupt the testimony and waited until the question time, and I would ask——

Mr. SCHUMER. I just want to join the issue a little because we have a lot of——

Mr. SENSENBRENNER. The Chair uses question time to enjoin the issue.

I would furthermore say that at the previous hearing all of the witnesses that the majority brought were those that specifically talked about obstruction of egress and ingress to abortion clinics, and those were the majority's witnesses, so let's not confuse apples with oranges here.

Mr. SCHUMER. No. We are talking about the bill.

Please, Mr. Wood.

Mr. WOOD. Actually, this exchange really highlights my last point in that this act, whether you intend it to or not, will have a chilling effect upon the constitutional and religious freedoms of America. I have read this bill this way, and I believe the average American would read this and to such a degree to be scared and intimidated, feeling that one of two sides is explicitly being singled out in the abortion debate, and then the average prolifer, having had experience with being hit with heavy fines and excessive damages by unfriendly judges or law enforcement, would feel chilled in the expression of their religious beliefs.

Just this week in Lakeland, FL, a mother was arrested while peacefully passing out prolife literature on a public right-of-way. She will probably beat that charge, but now she has to go through the entire court process terribly upset, her husband is terribly upset, and the children are upset, and this type of thing would only raise more questions.

You began with an offer, which I take as a sincere offer, that you offered to withdraw your bill if it prevented Bishop Daley in your district from praying the rosary out in front of the abortion clinic, and I assume that was a sincere offer. I would like to pose a further question to you then. If your bill would have the direct effect of scaring and intimidating those people who want to go with Bishop Daley out in front of that abortion clinic to pray the rosary, would you withdraw the bill?

Before you shake your head and say no to that, let me just tell you an experience I had within the——

Mr. SCHUMER. I will have a thousand people tomorrow who will tell me they are scared and intimidated, but the bill does not scare them. Maybe other people, like organizations that are misinterpreting the bill, are scaring them, but if they read the bill and knew what it did, it didn't scare them.

But please, Mr. Wood, I think Mr. Sensenbrenner is right.

Mr. WOOD. Well, I read in my C-SPAN Congressional Guide on the plane up that you have a degree from Harvard Law School.

Mr. SCHUMER. Correct.

Mr. WOOD. The average American does not have a degree from Harvard Law School.

Mr. SCHUMER. It is to their benefit, Mr. Wood. [Laughter.]

Mr. WOOD. All right. I am posing you the question that if the average American prolifer is scared and intimidated from praying in front of an abortion clinic by your bill, would you withdraw it?

Thank you very much.

[The prepared statement of Mr. Wood follows:]

Testimony
of Stephen Wood
to the U.S. House of Representatives Judiciary Committee
Subcommittee on Crime and Criminal Justice

June 10, 1993 - 2:00 p.m.

My name is Stephen Wood. I am a resident of Port Charlotte, Florida. I am the president of the Florida Life Center, a statewide pro-life organization, as well as the executive director of the Family Life Center International, a non-profit organization dedicated to strengthening the family, the sanctity of human life, and the historic Christian faith.

National attention has been focused on my state stemming from the act of violence committed outside a Pensacola abortion clinic. While there is no excuse for the actions of Michael Griffin, neither is there any excuse for threats, acts of vandalism, and violence by pro-abortion advocates in Florida.

I have personally received hate mail and hate calls. I have been screamed and yelled at while driving with my pre-school children all because I had a pro-life bumper sticker on my car. While I was a Presbyterian minister I received a threatening message on the church answering machine saying, "I would like to blow your ass up." At the time of the U.S. Supreme Court *Webster* decision I felt it necessary to seek special police protection for my home and my church building.

There has been slanted and one-sided reporting regarding acts of violence by pro-lifers. As we all know, there are two sides to every story. The press and media have generally focused on one side. A slanted public perception has grown up around this single-sided reporting.

Here is a Florida abortion-related story that did not get statewide, or national, press coverage. On Saturday, February 13th, I was speaking at a pro-life banquet for the Gainesville, Florida Right to Life organization. Pro-abortion advocates were yelling and screaming on the sidewalk in front of the Holiday Inn where the banquet was being held. Some pro-abortion protestors entered the

hotel and refused to leave the building when requested to do so by hotel security. The protestors left after police arrived. About half-way through my talk we were informed that the offices of the Gainesville Right to Life had just been firebombed. Fortunately, no serious damage was done besides minor smoke damage.

When I went to inspect the firebombing damage I was shown a large rock about the size of a bowling ball that had been tossed at the office window in a previous attempt to assault the right to life office on November 16, 1992. On February 28, 1990 a brick was thrown through the front window. On January 28th 1989, vandals stole the power usage meter to the pro-life office. Less than three weeks ago, on May 25, 1993, vandals placed one inch tacks across the parking lot. This is the violence and vandalism against just one pro-life office in one Florida city.

This Gainesville office which was firebombed was responsible in the previous year for distributing approximately \$30,000 in food, clothing, and assistance to needy mothers and their children through volunteer efforts. Why would anyone want to use violence against such charity? Yet there are such people in our state.

The story of the Gainesville firebombing was not carried across the state of Florida, even though faxes were sent to media outlets. Following the Pensacola shooting, the Florida Legislature moved into high gear towards passage of a bill designed to protect abortion clinics in a bill making it either a first degree misdemeanor, or a third degree felony, to disrupt a medical facility (Florida H.B. 1429). When we lobbied our Florida representatives we gave them copies of the local reporting on the Gainesville firebombing. Some representatives expressed surprise that they had never heard of the incident. We told them that vandalism and violence in the abortion controversy is not one-sided. It is informative that the Florida Legislature did not feel the necessity to pass this bill (Florida H.B. 1429) following the Pensacola shooting.

Unfortunately, Florida has become famous for one act of violence by a pro-lifer. Michael Griffin is not characteristic of the Florida pro-life movement. For the past two years I have been responsible

for coordinating the Florida Life Chain. In Florida, we organized America's largest statewide mobilization of pro-lifers in the twenty year history of our movement. This massive pro-life event turned out over 140,000 participants stretching over 290 miles along Florida's highways. All of this was accomplished without a single reported incident.

The Freedom of Access to Clinic Entrances Act of 1993 (F.A.C.E. - H.R. 796) is a piece of legislation singling out one of the two groups of people in the abortion debate. A basic sense of fairness would dictate that pro-life offices, pro-life workers, pro-life meetings, and churches also be protected if special legislation is passed to regulate actions in the heated abortion debate. If acts preventing and discouraging access to abortion clinics should be forbidden, why shouldn't they be forbidden outside of pro-life banquets and pro-life offices?

No single group, whether Green Peace, ACT-UP, nuclear protesters, or other human rights group should be singled out and treated differently. There are adequate existing laws to deal with civil disobedience.

Operation Rescue and other pro-life organizations that engage in civil disobedience are organizations that explicitly require all participants to sign a pledge of non-violence. Peaceful and non-violent civil disobedience should not be eliminated by harsh laws and penalties. By doing so you would inadvertently be creating a climate for violent activity to erupt.

There are also adequate laws dealing with arson, other acts of violence, and murder. The F.A.C.E. Act would not have stopped Michael Griffin from shooting David Gunn. Michael Griffin is facing charges of first-degree murder. If convicted, he could face Florida's electric chair. It is naive to think that fines, or imprisonment, would stop Michael Griffin when the electric chair didn't.

The F.A.C.E. Act will have a chilling effect on the constitutional freedoms of pro-lifers. The average pro-lifer will be afraid of being hit with fines and excessive damages by unfriendly judges and law enforcement using this legislation. Already some Florida courts have disallowed praying in front of

abortion clinics. Earlier this week a Lakeland, Florida mother was arrested while peacefully passing out pro-life literature while on a public right-of-way. Last month pro-life legal counsel in Washington State could not guarantee unsettled pro-lifers wanting to pray on public property in front of an abortion clinic that they would not be arrested under Washington's new clinic protection act. The proposed prayer meeting at the clinic was cancelled. In the same way, the F.A.C.E. Act will chill the religious freedoms of the average pro-life American.

Most everyone would like to see the abortion debate end. Unfortunately, the F.A.C.E. Act with its single-sided emphasis would not work with fairness and justice towards that end. Therefore, I respectfully ask you to reject the Freedom of Access to Clinic Entrances Act of 1993 in its entirety. Thank you.

Attachment: Article from *The Gainesville Sun* 02/14/93

The Gainesville Sun
Sunday, February 14, 1993

Section B

Firebomb hits office of pro-life

It did little damage, but
interrupted a speech at a nearby
anti-abortion banquet.

DAK MOORE

PHOTOGRAPH BY

A firebomb thrown at a local Right to Life office caused damage to the building, but interrupted a speech being given less than a mile away at an anti-abortion banquet.

When Wood, president of the Florida Life Center, was speaking to about 50 members of the Gainesville Right to Life organization at the downtown Holiday Inn when he was interrupted by a firebomb. A director of the organization, Mike said that minutes earlier the local office had been closed down.

Gainesville Police officer said someone threw a firebomb at the Gainesville Right to Life building, 921 NW 13th St. Fire investigator at the scene said a firebomb made a beer bottle did not go through a window at which it aimed, but it blackened part of the building's exterior wall.

There were no suspects late Saturday, said Gainesville Lt. Alena Duggs.

"I feel very sad that people don't like us to help women in some circumstances," O'Malley said. "I pray for the people who did it."

After announcing the incident, O'Malley left the Holiday Inn where Wood was speaking.

He then through the same entrance where about 50 Gainesville pro-choice supporters had been protesting with and chants earlier in the evening.

Wood then began to pray with the hope that "what was done for evil" will "multiply many hearts" to the anti-abortion cause.

President of the Family Life Center, International, is working to build a network between local anti-abortion organizations to overcome recent setbacks to the movement and to keep members motivated.

Back to the movement. In the election of President Clinton, who is pro-choice, Clinton's election could influence the judicial system for years to come. Wood said President Clinton will be gone in four years, Wood said. "I think that he is the problem, but the justices he leaves

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A Gainesville police officer talks with protesters today. From left, Endy, Duggs, and Endy. They are on 13th St. and University Ave. The two who were in life support at the hotel, refused requests to be interviewed. The two who were in life support at the hotel, refused requests to be interviewed. The two who were in life support at the hotel, refused requests to be interviewed.



hiring of women who choose abortions. "We're not going to let them keep trying to impose their religious views," said Pam Duggs. They said Saunders' protest was the first at a Gainesville abortion clinic. They said they were in a continuing effort to confront anti-abortion supporters whenever they attempt to spread their views. Referring to anti-abortion protesters at abortion clinics, they said pro-choice advocates will show anti-abortion supporters "how it feels" to be confronted constantly by protesters. They said they were in Gainesville to help women in Florida to live with their choices. Gainesville anti-abortion protesters said they were in Gainesville to help women in Florida to live with their choices. Gainesville anti-abortion protesters said they were in Gainesville to help women in Florida to live with their choices.

He encouraged them to fight abortion on local and state fronts, despite the lack of support in Washington.

He called upon them to bring crisis intervention centers that would help mothers choose the best of abortion.

Correspondent Lisa Fisher contributed to this report.

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Mr. SCHUMER. Please, Mr. Eliason is our last witness. He is Victor Eliason. He is vice president and executive director of a Christian broadcasting station in Milwaukee, WI. He is also the host of a national call-in program, "Cross Talk."

Same rules, Mr. Eliason.

Mr. ELIASON. And we would include also director of a radio network of 208 stations across our Nation.

Mr. SCHUMER. We will add that into the record.

STATEMENT OF VICTOR ELIASON, VICE PRESIDENT, WVCY CHANNEL 30 CHRISTIAN BROADCASTING, MILWAUKEE, WI

Mr. ELIASON. Thank you, sir.

Before I begin, I had a question regarding page 4, item 3, and if it could be defined what agents of public utilities are referred to in this bill.

Mr. SCHUMER. It is fire departments, things like that.

Mr. ELIASON. Television, radio, media?

Mr. SCHUMER. No, you are not public, unless you work for Channel 13—you know, PBS.

Mr. ELIASON. They would be considered public?

Mr. SCHUMER. I don't know. We would have to decide. No, you are not public. You and your radio stations, any television station, is private.

Mr. ELIASON. News crews?

Mr. SCHUMER. Private.

Mr. ELIASON. OK.

As a broadcaster in the city of Milwaukee for 32 years, I am appalled at the growing government hostility that is being demonstrated toward news media owned by those who would identify as being prolife. Although there is no basis in the Bill of Rights for discrimination against media outlets based on viewpoint, this is precisely what is happening with alarming frequency across our country.

I am in touch with religious broadcasters across America on a regular basis, and I am hearing some consistent themes sounded regarding the treatment of prolife news organizations in the coverage of abortion clinic demonstrations.

In Melbourne, FL, recently, a man named Chris Rogers, a video photographer with CDR Communications of Washington, DC, was in front of the Aware Women's Health Clinic attempting to videotape protesters for a documentary. Despite the fact that the rest of the news media was present at the door of the clinic, a police officer stopped him and asked him for his press credentials. He produced them and then was asked whether or not he was prolife. When he stated that, yes, he was, he was told to get behind the barricades or he would be arrested. The rest of so-called legitimate news media continued to do their job unchallenged. The police lieutenant, when asked about the department's definition of "legitimate media," responded, "Oh, that would be ABC, CBS, NBC, or CNN."

Another Melbourne woman seeking press credentials for a religious newspaper with a circulation of 500 was told that she was not legitimate press and would not qualify for those credentials.

In Milwaukee, we have experienced the same sort of treatment in our attempt to cover clinic activities for Channel 30 WVCY TV.

In downtown Milwaukee, WVCY still cameraman Irv Thoenus was told by a policewoman that he could not take pictures of a confrontation which he witnessed. I challenged the police officer and informed the officer that Mr. Thoenus was a bona fide member of the press. The police officer responded, "Yeah, but which press?" I informed the officer that under the first amendment to the Constitution of the United States that freedom of the press was afforded to all. By the time the officer backed down, the newsworthy incident was over.

In another location, a WVCY still cameraman Jack Roper raised his camera from behind police barricades to photograph an arrest of a prolife citizen taking place. A police officer approached him and said, "You're going to jail." Once again, a cameraman was unable to do his job because of police interference based solely on the cameraman's viewpoint.

TV 30 videographer Tom Elliot was arrested twice while exercising his rights as a journalist. The first time, he was arrested outside an abortion clinic while taping the treatment of prolife citizens as they were being arrested and placed into vans. The arrest was based solely on the complaint of a clinic protester accusing him of trespass. When I went to the police station to retrieve the cameraman and his camera, I questioned the charges of trespass, asking the police captain if he had ever sent to our station any directives setting forth specific boundaries for TV cameramen. The officer's response was, "I don't know if it was ever put into print, but he should have known." To my knowledge, TV 30's cameraman was the only journalist arrested on that date.

The second time Mr. Elliot was arrested was several weeks ago when he was gathering news footage outside a clinic. A prochoice protester approached him and began to obstruct his camera lens touching his camera. Mr. Elliot appealed to a nearby police officer to stop the harassment and was ignored completely. A few minutes later, Mr. Elliot tried to protect his camera lens, brushed his hand against the hand of a prochoice protester, and the protester cried out, "He struck me." Immediately our cameraman was arrested for disorderly conduct.

TV 30 cameraman Robin White was arrested while attempting to videotape clinic activities. A clinic protester simply complained about his presence, and with no questions Mr. White was taken into custody.

Outside another abortion clinic, several media trucks were parked in an adjoining parking lot. The police officer, thinking that we were the CBS affiliate, initially gave us permission to park. Upon finding out it was TV 30, he refused to let us park in the lot.

These are just a few examples of what we as journalists have faced in attempting to do our job. The basis for this discrimination is our viewpoint. When first amendment rights are only afforded to those with a viewpoint that is acceptable to the State, freedom of the press has lost all meaning. As Andrew Hamilton said in his impassioned defense of freedom of the press, experience has shown us that a bad precedent in one government is soon set up for an authority in another. A precedent of suppressing politically incorrect views in the media represents a danger to every news organization that values the first amendment.

Thank you, sir, for your time.

Mr. SCHUMER. Thank you, Mr. Eliason.

I am going to take my 5 minutes right now.

Mr. SENSENBRENNER. OK. I will take mine when we return.

Mr. SCHUMER. OK.

Let me just say first to Mr. Eliason, number one, if the incidents you state are true, I think they are very wrong and you ought to do what you can against them. This bill, of course, does not affect that kind of issue unless your cameramen are standing there blockading.

I just have a couple of quick questions. First just to Reverend McHugh and Rabbi Levin: Do you gentlemen both support the right to blockade and actually physically prevent people from going to a clinic?

Rabbi LEVIN, would you support that?

Rabbi LEVIN. If a person feels that abortion is akin to murder, which is a Jewish viewpoint stated in the Talmud, codified by Maimonides, although I do not particularly equate abortion exactly murdering a person, a live person, those who do feel they have a moral obligation.

Mr. SCHUMER. I respect their moral obligation.

Rabbi LEVIN. Should they be treated like common criminals with the brunt of Federal law coming out against them?

Mr. SCHUMER. So you would say there should be no law against that?

Rabbi LEVIN. I think that whatever—

Mr. SCHUMER. OK. I just want to know your view.

Rabbi LEVIN [continuing]. Laws are now on the books—

Mr. SCHUMER. That is a different issue. I asked you should there be a governmental law that—

Rabbi LEVIN. There should be no Federal law.

Mr. SCHUMER. What about a State law?

Rabbi LEVIN. I'm not familiar with—

Mr. SCHUMER. Let's say there was no State law, let's say there were no laws at all, and you had the decision to make whether there should be a law that said you cannot blockade—not hand out leaflet, not picket, blockade.

Rabbi LEVIN. Congressman Schumer, with all due respect, I say that in an imperfect world what we have are certain parts of society that are doing things like blockading houses of religious worship, stopping people in the middle of the streets, and there is no law to deal with that. I think that there should not be a special law to deal with people who are trying to save preborn babies.

Mr. SCHUMER. So you would support the blockade and say there should be no Federal law.

Rabbi LEVIN. Absolutely.

Mr. SCHUMER. How about if it were a synagogue? Let's say it was a fundamentalist Christian or Muslim group that said, "We ought not to have synagogues," and they sat in front and prevented your congregants from walking in? Would you be against that law? They had just as strong a moral belief, because everyone's morality is different. Would you support that law?

Rabbi LEVIN. Congressman Schumer, you are exactly making my point. I explained, that has happened already in a little tiny house

of religious worship called St. Patrick's Cathedral, and Federal legislators such as yourself have not made any——

Mr. SCHUMER. There has been a blockade of St. Patrick's Cathedral? I am not aware of it.

Rabbi LEVIN. There have been, coming into the house of worship and disturbing the entire worship.

Mr. SCHUMER. Right, and what happened?

Rabbi LEVIN. And nothing happened, sir.

Mr. SCHUMER. I thought the police came in and arrested them.

I find it reprehensible what Act-Up did with the host and all of that.

Rabbi LEVIN. Let me respond to you. The police came in and arrested them, and what Federal law was there that put them behind bars for a year? What happened?

Mr. SCHUMER. They were arrested. I don't know what happened to them, but they were arrested.

Rabbi LEVIN. Congressman Schumer, nothing happened.

Mr. SCHUMER. If you have such a law and want to draft it, I would fully support it. I would fully support it. It is the same issue, but you know what? What is good for the goose is good for the gander, and for you to say there ought to be a law in one situation but not in another, I think you fundamentally don't understand what America is all about.

Rabbi LEVIN. Congressman Schumer, I'm not making that. I didn't tell you to write that law.

Mr. SCHUMER. You said to me, when I asked you, should there be a blockade law, and you said, well, they are blocking, first you said synagogues, then you said St. Patrick's.

Rabbi LEVIN. I didn't say synagogues.

Mr. SCHUMER. OK. And I said to you, let's have those laws. Now, if we had laws like that, would you then support this law to prevent blockades of abortion clinics, respecting that the people who do it feel they are preventing murder? I respect that view. I don't agree with it; I respect it.

Rabbi LEVIN. So the answer to that is——

Mr. SCHUMER. Let's say we had the law for synagogues and churches. As I mentioned to Ms. Mahoney, we did one last year because animal rights protesters, whom I have some sympathy with, were blockading universities and harassing them, and we passed a law in this committee. I would support it for just about anything where people took the law into their own hands as opposed to educating, which is what Bishop Daley tries to do, and I respect it. He doesn't try to blockade, he doesn't stand right in front of the door or sit down in front of the door. He wouldn't; he doesn't believe that is right.

Operation Rescue does believe that is right, and that, to me, separates—and I think Congressman Sensenbrenner was trying to do just that—what I would call the mainstream of the prolife movement from those who believe they must go beyond education to what has classically been called civil disobedience. That is the difference.

Reverend MCHUGH. That is precisely the point. Are you saying that you want to eliminate all civil disobedience?

Mr. SCHUMER. Reverend, what I am saying respectfully is, when there is civil disobedience, the Government must, and the great theorists who believe in civil disobedience believe that the Government must then step in. Civil disobedience assumes that people will go peacefully to prison. Gandhi, I think—I guess he was the modern—I don't know if he was the originator of civil disobedience, but he sort of brought it with a force on the modern world. He spent 10 years of his life in prison, and he said, as I recall, that, "I deserved to spend that in prison," or that is government, but he was trying to show the injustice of something, and I don't dispute people's right to protest, and, as I mentioned in my opening statement, civil disobedience is a very difficult issue. There are certain times when I might participate—

Reverend MCHUGH. I agree, it is very difficult. That is precisely why we don't need Federal law right now. There are other avenues of law that can deal with local problems.

Mr. SCHUMER. OK. My time has expired. I would simply say that why this bill came about, and the only other point I want to make, is, it is neutral in terms of blockading. It is designed to affect a prolife and prochoice institution the same way. But why we moved for a Federal law is (a) *Roe v. Wade*, the law of this land—the folks at this table, as strongly as they disagree, haven't been able to change that at this point—under *Roe v. Wade*, it is a Federal right, and State law in certain areas, either because of the ideological belief of the main law enforcer—the sheriff, the D.A., or whatever—or because they were overwhelmed—there is a town in Westchester—Dobbs Ferry, is it?—where they have a police department of three and there are thousands of blockaders—are unable to cope. That is why we passed a Federal law, plain and simple.

Reverend MCHUGH. Dobbs Ferry is the State of New York's problem, it is not the Federal Government's problem. We don't want the Federal Government passing Federal laws to take care of local problems that can be adequately addressed by State laws and State regulation.

Mr. SCHUMER. No, but, Reverend, in all due respect, with the Supreme Court ruling, it is the Federal Government's problem, just when the Governor of Mississippi refused to admit people into the University of Mississippi because of the color of their skin, that became the Federal Government's problem. It was a Federal civil right. I know you disagree with that, but that is what the right to choose is.

I will go vote, and my 5 minutes are up, but Mr. Sensenbrenner will get his, and if Mr. Edwards returns, he will, and I very much appreciate everybody's views here and your coming and our ability to join argument. We probably haven't convinced one another.

We are recessed for 10 minutes.

[Recess.]

Mr. SCHUMER. The hearing will resume, and Mr. Sensenbrenner has his turn at questioning.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I would like to ask Ms. Mahoney a question as a national spokesperson for Operation Rescue.

I know that there have been literally thousands of arrests of people who have participated in Operation Rescue activities for var-

ious offenses such as disobeying court injunctions, disorderly conduct, as well as obstructing entrances to clinics. Do you know if any member of Operation Rescue has been arrested for an act of violence?

Ms. KATIE MAHONEY. Absolutely not. I know of none, and there has never been a single conviction for any act of violence from any member of Operation Rescue, and there have been over 70,000 arrests—72,000 arrests.

Mr. SENSENBRENNER. Is the alleged assailant of Dr. Gunn in Pensacola, FL, a member of Operation Rescue?

Ms. KATIE MAHONEY. No, he is not a member of Operation Rescue or any prolife group that I know of in terms of an organized group. He was kind of new on the scene, from what I understand.

Mr. SENSENBRENNER. I would like to ask a question of Mr. Eliason if I could. The question is this: Do you know if, in Milwaukee, people whom the police deem to be legitimate news media have been given directives on what is inbounds and what is out of bounds and those directives have not been shared with other members of the news media who have not been so favored?

Mr. ELIASON. I have in my briefcase the complete directive from Chief Arreola's office, and it in nowhere sets the boundaries in that statement. This is why it has been left pretty much open, and so each area we find those selective difficulties when our cameramen have been in one place.

As I mentioned in my report, when we were assumed to be Channel 6, they said we could park there; when they heard it was Channel 30, they said no, and it was the same place.

Mr. SENSENBRENNER. The same officers?

Mr. ELIASON. The same officer.

Mr. SENSENBRENNER. Did you take that up with the police chief? and, if so, what was his response?

Mr. ELIASON. We called internal affairs. There has been no response whatsoever.

Mr. SENSENBRENNER. OK.

A question of Rabbi Levin, if I could.

Do you believe that the legislation that has been reported from subcommittee would have a chilling effect on the activities of prolife protesters?

Rabbi LEVIN. Absolutely. Absolutely, because the fact of the matter is, people get from Federal legislation, they receive broad philosophical understandings of how government and therefore, society views certain activities, behaviors, and even thoughts.

Take the civil rights legislation. Would anyone say that in the last 25 years there hasn't been a marked difference as to the way children view civil rights, et cetera? Haven't strides been made? In the same way, this kind of legislation with the Federal Government—and, of course, I respectfully challenge Charles Schumer not to tell me to sponsor legislation. I am not a Congressman. I cannot sponsor legislation.

Mr. SENSENBRENNER. We would like you to be one.

Rabbi LEVIN. Thank you.

Mr. SENSENBRENNER. I think you would be a very creative Congressman.

Mr. LEVIN. Thank you.

Mr. SENSENBRENNER. No offense to the chairman.

Mr. SCHUMER. Mr. Sensenbrenner, he has tried—not for Congress but for other places.

Rabbi LEVIN. For Congress. You forgot Stephen Solarz' 35 percent.

Mr. SCHUMER. Oh, yes, that is right. He ran against Stephen Solarz.

Rabbi LEVIN. The fact of the matter is that it does have an impact, and when there is legislation that will deal with antisocietal forces like Act-Up, which Congressman Schumer says he is opposed to. I think that will have a positive influence on people. They will see that this kind of militancy on the part of militant homosexuals will not be tolerated. But when it is only aimed at prolife people, the message is clear, and children are going to grow up thinking that various protest behaviors for prolife causes are outside of the pale. No question about it.

Mr. SENSENBRENNER. OK. Thank you very much. I have no further questions.

Mr. SCHUMER. OK. Then I want to thank the panel for their time and for their, I know, very heartfelt testimony.

We will resume with panel two. Two distinguished lawyers make up our second panel today. Prof. David Cole teaches constitutional law and criminal procedure at Georgetown University Law Center. He has written extensively on first amendment and other constitutional issues. He has argued many first amendment cases, including the recent flag burning cases which came before the Supreme Court. Mr. Joseph Helm is a partner in McLario & Helm. His Wisconsin-based firm represents prolife citizens involved in protest activities. In addition, Mr. Helm served as counsel to the Civil Liberties Legal Foundation, a Wisconsin-based civil rights foundation.

I want to thank both of you for taking time out of your busy schedules to testify here today. As with the first series of witnesses, your prepared testimony will be read into the record, and we will start with Professor Cole and then Mr. Helm. Five minutes for each of you, please.

Mr. COLE. Thank you, Mr. Chairman.

Mr. SCHUMER. Professor Cole, I have been told, has to leave at 4:15, but I think we will have time—you will be able to do that.

STATEMENT OF DAVID COLE, ASSOCIATE PROFESSOR, GEORGETOWN UNIVERSITY LAW CENTER, WASHINGTON, DC

Mr. COLE. Thank you. I am honored to be invited to testify here today.

We have heard a lot of discussion today already about whether abortion is right or wrong, about whether it is a constitutional right or whether it is murder, and there is absolutely nothing wrong with that debate. We may disagree with the relevance of that debate to this particular legislation, but debate is exactly what this country stands for—debate, disagreement, expression of strong views. We each try, through political dialog, to persuade each other of the correctness of our positions. Both sides, prolife and prochoice, engage in mass demonstrations in the District of Columbia, all part of the political dialog, all perfectly legitimate.

But our country has always drawn a line, and our Constitution has always drawn a line, between speech and demonstrations, on the one hand, which seek to persuade through the force of rhetoric and reason, and imposing one's views on another by force, by the force of numbers. The first amendment has never protected the right of people, no matter how strong their views, no matter how deeply felt, no matter how religiously based those views are—has never protected the right of people to impose those views on others by force.

This bill raises no first amendment issues because it focuses not on demonstrations, not on speeches, not on lawful, political speech activity, but on physically blocking another person from access to reproductive care facilities.

I want to make a couple of points. First, we have heard a lot here today about violence and how the demonstrations are peaceful, not violent, and how the other side is violent. Violence is not the issue. Force is the issue. Whether peaceful or not, whether with rosaries or not, if someone physically compels another person not to do something simply because that person thinks it is wrong, that is the imposition of force. That is what this bill is directed at, and so all the talk about how peaceful the blockades are are irrelevant. The point is that we are not permitted under the first amendment to impose our views on others by force.

The second issue is, why has Congress focused on blocking access to reproductive care facilities and not blocking access to Christian broadcast stations or blocking access to prolife advocacy offices or, for that matter, one of my concerns, blocking access to law school classrooms?

Well, I think Reverend Mahoney gave you the answer to that. He said there are 300,000 people in Operation Rescue nationwide. Operation Rescue people are committed expressly to physically blocking access to abortion facilities. That is their express purpose.

He also stated that over 70,000 of those people have been arrested for violating court orders, for violating police orders, for physically blocking access of people to engage in what is their constitutional right.

Show me a similar nationwide problem regarding blocking access to Christian broadcasting stations, prolife advocacy offices, law school classrooms, and I would say it would be appropriate for Congress to address that as well. There is no such nationwide problem.

As to the constitutional issues, first, the bill does not prohibit protected expression in any way whatsoever. In fact, both this bill and the Senate version expressly state that they do not prohibit any protected first amendment activity. They are limited to force, physical obstruction, and threats of force.

Second, does it create a thought crime by being one-sided? No, this bill does not, in the same way that a bill that prohibited a person from obstructing others in exercising their voting rights would not be a thought crime. There is a Federal law to that effect. Nor would a bill prohibiting a person from denying housing on the basis of race be a thought crime, and there is a Federal law to that effect. This bill is patterned on those types of legislation. They have long been considered constitutional. There is no question of their constitutionality.

A thought crime happens when somebody criminalizes thought. Here, antiabortion thought is permitted, antiabortion prayers are permitted, antiabortion speeches are permitted, antiabortion demonstrations are permitted. What is criminalized is where the actor chooses to go beyond thought, beyond speech, beyond a demonstration, beyond a prayer, to use force to impose those views by force of numbers on somebody else.

When section 1985(3) prior to *Bray* was used to enjoin these types of blockades across the country, Operation Rescue raised a series of first amendment defenses in every court across the land. Every judge who addressed those claims rejected them out of hand. No court has ever held that there is any first amendment freedom to blockade an abortion clinic.

Thank you.

Mr. SCHUMER. Thank you, Professor Cole.

[The prepared statement of Mr. Cole follows:]

TESTIMONY OF DAVID COLE¹
ON THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993
BEFORE THE SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
OF THE HOUSE JUDICIARY COMMITTEE

JUNE 10, 1993

I. INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am honored to have been invited to testify on the Freedom of Access to Clinic Entrances Act, H.R. 796 and S. 636. I will address the principal constitutional objection to the bill, as well as some of the comments of those who have preceded me in this hearing. I believe that the bill, particularly in its Senate form, is a much needed and plainly constitutional attempt to ensure that women are not forcibly denied the exercise of their constitutional right to choose to have an abortion. Other than the labor picketing exception in H.R. 796, the bills do not violate the First Amendment.

II. FORCE, NOT VIOLENCE, IS THE ISSUE

You have heard today from witnesses who have emphasized the peaceful and non-violent nature of many anti-abortion protests. I will not dispute that many of the protests have been non-violent, just as they do not dispute that some have been violent. But the debate over violence vs. non-violence is a red herring. The issue

¹ Associate Professor, Georgetown University Law Center.

is not whether the protests are violent or peaceful. The issue is whether the protests involve the use of force to compel other human beings to do as the protestors wish.

The clinic access bills are addressed to physical interference with the rights of others. It does not matter whether that physical interference is occasioned by violence, or by the "peaceful" force of hundreds or thousands of protestors physically barring entry to an abortion facility. If one thing is clear from the Operation Rescue blockades that have taken place over the past five years, it is that their expressly stated purpose is to interfere physically with the rights of others through the use of mob force. The whole point of a blockade is to physically block access to abortion facilities.

Operation Rescue blockaders are not satisfied with spreading their message through non-coercive measures such as speech and picketing. They are not satisfied with using the political process to effect change; they are not satisfied with the power of persuasive ideas or rhetoric. They have chosen to go beyond speech, beyond persuasion, to the use of mob force to compel those they cannot persuade into doing their bidding. No matter how "peaceful" such force may be, it is still force, and it still precludes others from engaging in activity that it is their constitutional right to engage in.

When our government imprisons a person as punishment for committing a crime, it does not generally do so violently. Most incarceration is achieved in a peaceful manner. But we all

recognize that the government is exerting force, and by doing so is depriving the detainees of significant liberties and rights. We believe that deprivation is justified where it is carried out pursuant to a set of rules and procedures that society has democratically chosen and that accord with constitutional guarantees. We do not say that because a forcible detention is "peaceful," we need not be concerned with the rights of the detained. Violence is not the issue; the use of force is.

You have also heard from witnesses who have described incidents of violence attributable to the pro-choice side in this nation's ongoing debate over reproductive rights. Again, I am not here to dispute or confirm that such incidents have occurred. Violence, when used by either side to impose its wishes on others against their will, cannot be condoned. But the clinic access bills address a systemic problem -- a nationwide campaign to use the physical force of numbers to deny women their constitutional right to reproductive services. There are legions of cases across the country against Operation Rescue and its various offshoots for choosing to take force into their own hands by physically blockading abortion facilities. Federal and state judges across the country have entered injunctions against such conduct and issued contempt citations for knowing violations of their injunctions. As far as I know, there is not one case -- and not one injunction -- against pro-choice activists for any similar pattern of the premeditated use of force to bar anti-abortion activists from exercising their constitutional rights. The

recourse to force is an express strategy of Operation Rescue and its adherents; the same cannot be said of pro-choice activists.

III. FIRST AMENDMENT OBJECTIONS TO THE CLINIC ACCESS BILLS

The principal constitutional objection to the clinic access bills is that they punish "thought crimes." The argument, which is identical to that advanced against enhanced penalties for racially-motivated assaults, cannot withstand scrutiny. Critics of the clinic access bills maintain that the bills are unconstitutionally selective because they punish only those who use violence, force, or the threat of force against persons seeking to obtain or facilitate an abortion. Because the bill does not punish those who use violence, force, or the threat of force for all other purposes, the bill is said to violate the First Amendment. This argument is untenable.

First, nothing in the clinic access bills prohibits constitutionally protected speech in any way. In fact, both bills expressly provide that they shall not be construed to prohibit expression protected by the First Amendment. S. 636, § (f)(5) ("Nothing in this section shall be construed or interpreted to ... prohibit expression protected by the First Amendment to the Constitution"); H.R. 796, § 248(d) ("This section does not prohibit .. any expressive conduct (including peaceful picketing or other peaceful demonstrations) protected by the first article of amendment to the Constitution from legal prohibition") (as amended, March 25, 1993).

Second, if this argument were accepted, it would mean not only that the clinic access bills are unconstitutional, but that a whole host of well-established federal anti-discrimination and civil rights laws are unconstitutional. The clinic access bills are patterned after several federal laws that seek to protect persons from interference with the exercise of their civil rights. For example, 18 U.S.C. §594 prohibits intimidation, threats and coercion "for the purpose of interfering with the right of another person to vote or to vote as he may choose." Similarly, 18 U.S.C. §372 makes it unlawful to "conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office." Other laws prohibit interference by force or threat of force with the exercise of housing rights, 42 U.S.C. §3631(a), jury rights, 18 U.S.C. §1503, and a range of civil rights, 18 U.S.C. §245(b). If the clinic access bills were unconstitutional because they selectively protect persons exercising their rights to obtain or provide abortions, then so, too, would laws selectively protecting persons exercising their rights to vote, hold office, or enjoy equal housing opportunities.

It is true that the clinic access bills may in some instances prohibit expressive conduct, to the extent that people use force or threats of force against those seeking to obtain or provide abortions for the purpose of expressing a message. But in this respect, the clinic access bills are not distinguishable from any law punishing harmful conduct, for any harmful conduct may serve an expressive purpose. The fact that the World Trade Center bombers

may have sought by their actions to express opposition to United States policies does not mean that the First Amendment prohibits their punishment for that conduct.

Because virtually any harmful conduct can be accompanied by an expressive purpose, the central question in analyzing regulation of such conduct is not whether the individuals engaging in the conduct seek to express a message, but whether the government has a speech-suppressive purpose in regulating the conduct. See R.A.V. v. City of St. Paul, 112 S. Ct. 2538, 2546-47 (1992) ("Where the government does not target conduct on the basis of its expressive content, acts are not shielded from regulation merely because they express a discriminatory idea or philosophy.").

Where the government's interest in regulating conduct is unrelated to the suppression of expression, its regulations will generally be upheld, notwithstanding incidental effects on rights of expression. United States v. O'Brien, 391 U.S. 367 (1968). Where, on the other hand, the government's interest in regulating the conduct is related to the message the conduct expresses, its regulation is treated as a regulation of pure speech, and must be justified by a compelling state interest. Texas v. Johnson, 491 U.S. 397, 407 (1989).

For example, were a municipality to outlaw all open-air burnings because of legitimate environmental or safety concerns, it could punish someone who burns a flag (or a pro-choice banner), even though that person did so in order to express a message. But where Congress criminalized the burning of the United States flag,

its interest necessarily derived from what the burning of the flag expressed, and its regulation was therefore treated as a regulation of pure speech. United States v. Eichman, 110 S. Ct. 2404 (1990).

Similarly, assassinating the President will often express a message, but there is no constitutional prohibition on criminalizing such conduct. The First Amendment is not infringed in that situation because the government's reason for prohibiting the conduct is not to suppress the message the act communicates, but to protect the President from assassination.

Thus, the critical question in analyzing the constitutionality of the clinic access bills is whether the government's interest in regulating the prohibited conduct is related to the suppression of expression. Here, Congress's interest is clearly unrelated to expression: it seeks to ensure safe access to abortion for women who choose to exercise that constitutional right. Its interest has nothing to do with suppressing the expression of anti-abortion or any other views. Anti-abortion proponents are free to express their message, so long as they do not use violence, force, or the threat of force against persons because they seek to obtain or provide abortions. Moreover, it is irrelevant, under the law, what message an individual seeks to send by preventing someone from obtaining or providing abortions, or indeed whether the individual intends to send any message at all.

Some have suggested that the bills' intent requirements raise First Amendment problems. But that argument again proves too much, for almost all criminal law contains intent requirements. As

Attorney General Janet Reno explained to the Senate Judiciary Committee, the intent requirement is merely a means of defining the interest that government is seeking to protect. The intent requirement, like that in many federal, state, and local laws, seeks to narrow the statute to those who intentionally interfere with another's rights. The argument that the intent requirement violates the First Amendment would hold, for example, that government is constitutionally required to treat someone who intentionally murders another the same as someone who does so by accident. Intent requirements are an established element of the criminal law, and do not violate the First Amendment, so long as they do not turn on intent to express a particular message. Neither of the clinic access bills does that.

One aspect of the House version of the bill is constitutionally problematic -- the exception for "conduct by a party to a labor dispute in furtherance of labor or management objectives in that dispute." H.R. 796, §248(d)(2). If this is construed to mean that labor picketers can physically obstruct women from seeking abortions while others cannot, it would violate both the First Amendment and the Equal Protection Clause. See Carey v. Brown, 447 U.S. 455 (1979); Police Department of Chicago v. Mosley, 408 U.S. 92 (1971). I would urge, therefore, that the conferees adopt the Senate version of the bill, at least in this respect, as it does not include a labor exception.

IV. CONCLUSION

I have sought to demonstrate two principal points in my testimony. First, the critical concern underlying the clinic access bills is the systematic use of force, whether or not accompanied by violence, to bar women from exercising their constitutional rights to abortion. Thus, claims that the blockaders acted peacefully are off the mark, as they do not deny that blockaders seek to exert force to bar women's entry to abortion facilities.

Second, the principal constitutional objection to the bills -- that they punish "thought crimes" -- is meritless. The bills prohibit conduct that forcibly interferes with another person's enjoyment of her constitutional rights; they are indifferent to the message that such interference is designed to express. If and when these bills become law, anti-abortion activists will be just as free as they are today to express their opposition through means that do not forcibly intrude on the rights of others, such as speech, demonstrations, pickets, and the like. What they will be barred from doing is going beyond the power of persuasion to compel persons by force to do their bidding. The First Amendment has never protected such activity, and it never will.

Mr. SCHUMER. Mr. Helm.

STATEMENT OF JOSEPH H. HELM, JR., ATTORNEY, McLARIO & HELM, MENOMONEE FALLS, WI

Mr. HELM. Thank you for the privilege of being here today and sharing some thoughts with you.

Unlike my esteemed colleague, who is in the world of academia for the most part, I am more or less in the trenches. I am a small suburban law firm with the privilege and opportunity to represent people who we believe have been the subject of unfair treatment and unequal treatment. We believe the climate that is currently prevailing in these conflicts is one of more or less religious thought cleansing. We see and foresee this bill merely opening the flood gates for more of that same type of conduct, and that is primarily the reason that we appear here today, to testify regarding what we know of, which isn't much. We have had the bill for 18 hours. Some of those hours I have had to sleep; others, I have had to work.

The House rule 796, I believe, is, without question, unconstitutional. I think the bill clearly violates the free speech clause of the U.S. Constitution, and it does that in several ways. The exception of the labor protest in this bill, I think, clearly points to an impermissible classifying based on subject matter of the picketing. The Supreme Court in *Police Department of Chicago v. Mosley* in 1972 as well as *Carey v. Brown* in 1980 clearly prevented government from getting into the business of regulating content of speech or expression.

Under this bill, protesters outside a medical facility who protest animal experimentation or protest unfair labor practices or demand better AIDS research would not be affected. It is only those who hold to a prolife viewpoint who would become Federal felons and who would be subject to the extreme criminal and civil penalties of this bill.

H.R. 796 defines an offense based on viewpoint and subject matter. In fact, no conviction could even be possible under this bill unless the prohibited motivation or animus is demonstrated. What this act seeks to do, I submit, is, in fact, create a Federal thought crime.

In 1992, the Supreme Court ruling in *RAV v. City of St. Paul, Minnesota*, invalidated St. Paul's bias-motivated crime ordinance, where it found that the racially motivated cross burnings could be prosecuted under a number of statutes already in existence. It was, the Court found, unconstitutional to punish such behavior under an animus-based law.

The sweeping terms used in H.R. 796 are another problem. The vagueness of the bill's wording would unquestionably have a dramatic chilling effect on all forms of expression that the proliferers engage in outside these clinics, including prayer, peaceful picketing, handing out of leaflets, and sidewalk counseling.

Many citizens would predictably abandon the exercise of those rights at the prospect of having to defend themselves against the extreme criminal and civil penalties contained in this bill, and we have firsthand experience of the costs and burden and the emotional trauma that are put upon criminal defendants now in just these types of situations in Milwaukee this past year.

H.R. 796 has been introduced at a time of escalating civil rights abuses of American citizens who hold the prolife view. In the city of Milwaukee there is a long and growing list of complaints from citizens who have been subject to unfair treatment specifically because of their viewpoint. The following are just a few examples of what had happened and what I submit will increase and happen with regularity should this bill be passed.

Last summer, a special courtroom was established in Milwaukee County in a National Guard armory for the purpose of processing prolife demonstrators that were arrested. This courtroom was denied public access. Citizens pleading not guilty have been denied a continuance to raise bill, with the result that they serve their entire sentence without ever being found guilty of an offense.

Although the law requires the judge to advise citizens of their right to a jury trial, in one afternoon alone last summer, 112 protesters went through that court and were never once advised of their right to jury trial.

Children engaging in nonviolent protests have been threatened with placement in foster homes despite the clear ruling of the Supreme Court in 1969 that children had the right to engage in political protest. Prosecutors have double charged prolife, but not prochoice, protesters with ordinance violations and contempt proceedings for the same conduct.

A prochoice demonstrator bit a prolifer, and despite the obvious teeth marks which were evident 24 hours later on the prolifer's arm, charges were never brought against the woman who did the biting. By the way, there was a second incident as well of the same. Both are documented on videotape.

Prochoice demonstrators have knelt behind proliferers, who were then pushed from the front by other prochoice demonstrators, and when the prolife citizens fell on top of the prochoice demonstrators—the old “cut them off at the knees” trick—the proliferers were the ones that were arrested for battery.

These are just a few examples of what we believe is an unmistakable double standard on the part of the justice system when it involves those with a prolife view. H.R. 796 puts the Federal Government in the position of punishing behavior only when that behavior is motivated by a particular viewpoint.

According to *Bray v. Alexandria's Women's Health Clinic*, the court stated, “Whatever one thinks of abortion”——

Mr. SCHUMER. Mr. Helm, if you could begin to——

Mr. HELM. I will wrap up. Thank you, Congressman.

“Whatever one thinks of abortion, it cannot be denied that there are common and respectable reasons for opposing it.”

I remember when nonviolent civil disobedience was a badge of honor and student sit-ins were the liberals' protest tactic of choice. I remember when the liberal community would have protested closed courtrooms, wholesale violations of civil rights and civil liberties, heavyhanded and vindictive prosecutions, impositions of sentences before trial, and restrictions on freedom of speech and association.

If I can close with one quote, Justice Robert Jackson, in *Railway Express Agency, Inc. v. New York*, said this, “The framers of the Constitution knew, and we should not forget today, that there is

no more effective practical guarantee against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally to all. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected."

Thank you.

[The prepared statement of Mr. Helm follows:]

STATEMENT OF ATTORNEY JOSEPH HELM, JR.

June 10, 1993

The Schumer-Morella Act, HR 796 is, without question, unconstitutional. This bill clearly violates the Free Speech Clause of the U.S. Constitution. It does this in several ways.

The exception of Labor protests in this bill clearly points to impermissible classifying based on the subject matter of the picketing. The U.S. Supreme Court, in Police Department of Chicago v. Mosley, 408 U.S. 92 (1972) as well as Carey v. Brown, 447 U.S. 455 (1980) clearly prevents government from getting into the business of regulating content of speech or expression. Under HR 796, protesters outside a medical facility who protest animal experimentation, protest unfair labor practices, or demand better AIDS research would not be affected by this bill. It is only those who hold to a pro-life viewpoint who would become federal felons and would be subject to the extreme criminal and civil penalties of this bill.

HR 796 defines an offense based on viewpoint and subject matter. In fact, no conviction would be possible under HR 796 unless the prohibited motivation is demonstrated. What the Schumer-Morella Act seeks to do is to create a federal thought crime. The 1992 Supreme Court ruling in R.A.V. Vs. City of St. Paul, Minnesota 112 S. Ct. 2538 (1992) invalidated St. Paul's "Dias-Motivated Crime Ordinance". It was found that the racially motivated cross-burnings could be prosecuted under a number of statutes already in existence. It was, the court found, unconstitutional to punish such behavior under an animus-based law.

The sweeping terms used in HR 796 are another problem. The vagueness in the bill's wording would unquestionably have a chilling effect on forms of expression protected by the First Amendment, including prayer, peaceful picketing, the handing out of leaflets and sidewalk counselling. Many citizens would predictably abandon the exercise of their First Amendment rights at the prospect of having to defend themselves against the extreme criminal and civil penalties contained in this bill.

HR 796 has been introduced at a time of escalating civil rights abuses of American citizens who hold the pro-life view. In the city of Milwaukee there is a long and growing list of complaints from citizens who have been subject to unfair treatment specifically because of their viewpoint. The following are just a few examples of what has happened and continues to happen to pro-lifers in the justice system.

A special courtroom was established in June of 1992 in Milwaukee County, in a National Guard armory to process cases of non-violent protesters. Public access to this court room was denied.

Citizens pleading not guilty have been denied a continuance to raise bail, thus requiring them to serve the maximum sentence without ever having been found guilty of any offense.

Although the law requires the judge to advise citizens of their right to a jury trial, 112 protesters were recently processed through this court and not a single one was so advised by the judge.

Children engaging in non-violent protests have been threatened with placement in foster homes.

Prosecutors have double charged pro-life (but not pro choice) protesters with ordinance violations and contempt proceedings for the same conduct.

A pro-choice demonstrator bit a pro-lifer and despite the obvious teeth marks evident on the pro-lifers arm, charges were never brought against the woman who did the biting.

Pro-choice demonstrators knelt behind pro-lifers who were pushed from the front by pro-choice demonstrators. When the pro-life citizens fell on top of the pro-choice demonstrators, they were arrested and charged with battery. The pro-choice demonstrators were not arrested.

These are just a few examples of what is an unmistakable double standard on the part of the justice system when it involves those with the pro-life viewpoint. HJR 796 puts the federal government in the position of punishing behavior only when that behavior is motivated by a particular viewpoint. It is this viewpoint that was referred to by the United States Supreme Court in the 1993 Decision, Bray V. Alexandria Women's Health Clinic 113 S.Ct. 753, 762. The court stated.

"Whatever one thinks of abortion, it cannot be denied that there are common and respectable reasons for opposing it.."

This bill is being presented as something that will merely restore order outside abortion clinics and protect a woman's right to an abortion. The reality is far different. HJR 796, using federal criminal law, attempts to suppress viewpoints that this bill's sponsors find offensive. This is clearly not allowed for by our constitution.

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Mr. SCHUMER. Thank you, Mr. Helm, and I will just make two quick points.

Number one, just reiterate what I had said to Ms. Mahoney before, you mentioned animal protesters. This committee did a bill on that last year, the same type of issue, in my judgment; and, just second, I have been told that—and I don't know all the cases you bring up; I am not familiar with them. Obviously, any violence that is committed on either side should be fully prosecuted. At least that is my opinion. But in the case of the woman who was bitten, the court ruled—or the person who was bitten—the court ruled it was self-defense because a prolife demonstrator shoved an elbow in her face immediately before that. You didn't mention the whole story here. Didn't the court rule that was self-defense?

Mr. HELM. Just to correct the record, there was no court involved, number one.

Mr. SCHUMER. Right. The D.A. didn't—reviewed the case and said it was self-defense.

Mr. HELM. Exercising their prosecutorial discretion, had ruled that they did not believe that there was probable cause there, and one would have to view the videotape, which Congressman Sensenbrenner has a copy of, to determine whether or not they see in that video an elbow being thrown. I defy anyone to characterize it as—

Mr. SCHUMER. OK. The D.A. did review it, though, and came up with self-defense.

Mr. HELM. And, by the way, there are two such offenses clearly shown on video where there is no provocative—

Mr. SCHUMER. OK. Thank you, Mr. Helm. I have no further questions. As you can imagine, I think Professor Cole summed up my views pretty well.

Mr. SENSENBRENNER. Thank you very much.

For the record, Professor Cole was the witness that was selected by the majority.

Mr. SCHUMER. Right. He is my one witness.

Mr. SENSENBRENNER. Today. You had your share the last time. I have a few questions of Professor Cole.

Mr. Schumer was correct, was he not, in stating that you participated on behalf of the defendant in the flag-burning cases that were decided by the Supreme Court?

Mr. COLE. That is true.

Mr. SENSENBRENNER. Do you believe that burning the American flag in front of the entrance to the Republican Convention in 1984 was protected free speech?

Mr. COLE. That is what the Supreme Court held.

Mr. SENSENBRENNER. Do you believe that?

Mr. COLE. I believe the Supreme Court was right in that matter, yes.

Mr. SENSENBRENNER. What is the difference between that and a 55-year-old woman praying the rosary in front of the entrance to an abortion clinic?

Mr. COLE. Mr. Johnson was not charged with blocking access to the Republican Convention. What he was charged with was expressing his opposition to the Republican Party outside of the convention. If the 55-year-old woman whom you are describing is sim-

ply expressing her opposition to abortion outside of an abortion clinic or any other kind of a clinic, there is no difference and she has every right to do that, but she also would not be liable under this law. She would only be liable under this law if she went beyond merely expressing her point of view, as Mr. Johnson did, and sought to physically obstruct someone from entering that facility.

Mr. SENSENBRENNER. OK.

Mr. COLE. In a word, the difference is between physical obstruction and imposing force and expressing points of view.

Mr. SENSENBRENNER. OK. If someone is standing on the sidewalk, the public sidewalk, in front of an abortion clinic with a stack of leaflets that say, "Don't kill your baby" and have pictures of fetuses, aborted fetuses, on it and the like, and attempts to hand someone who is going into the clinic one of these leaflets, where the hand is between the patient and the door to the clinic, is that a violation under this law?

Mr. COLE. I wouldn't see it as a violation under this law. I think this law would be read in the same way that the courts have looked at Operation Rescue blockades.

Mr. SENSENBRENNER. Couldn't there be a claim of physical obstruction with the hand being between the patient and the door to the clinic?

Mr. COLE. Physical obstruction to ingress and egress. What that means is that someone is barred physically from going in. The fact that someone hands you a leaflet—I am sure, Congressman, that people hand you leaflets every day when you walk in and out of Congress. I am sure that that doesn't block your ingress and egress.

Now, on the other hand, if 100 or 500 members of some group that disagreed with your point of view decided to sit down in front of your office so that there was no way in the world that you could enter that office, that would be physical obstruction. I think you could make that—

Mr. SENSENBRENNER. They have done that. As a matter of fact, we have invited them in to have a cup of coffee. The only problem that occurs is when the janitor wants to close the building for the evening. So, you know, I don't see the analogy there.

How about Rosa Parks and all of the sit-ins during the civil rights movement? If the Alabama Legislature wanted to pass a law, a Freedom of Access to Soda Fountains Act, would that have been constitutional?

Mr. COLE. As far as my understanding of the sit-ins, African-Americans sat in restaurants that refused to provide them service. They did not block access to anyone else to go into those restaurants.

Mr. SENSENBRENNER. They were sitting on the stools of the soda fountain, and that would have blocked the access of someone who wanted to come in to order a soda.

Mr. COLE. Well, no. You walk in, and you order a soda. What blocks access is when someone stands in front of a doorway.

Mr. SENSENBRENNER. Professor Cole, I didn't go to Harvard Law School or Georgetown Law School, I went to the University of Wisconsin Law School in Madison—

Mr. COLE. A fine law school.

Mr. SENSENBRENNER. I think it is a fine law school, too—between 1965 and 1968.

Mr. SCHUMER. We will submit for the record, it is a fine law school.

Mr. SENSENBRENNER. We do agree on something.

There were all kinds of antiwar protests on the Madison campus, and the law school and various other buildings of the University of Wisconsin were physically obstructed by those who were expressing their opposition to the war in Vietnam to the extent that the Governor had to call out the National Guard upon occasion. Could they have been legislated against constitutionally?

Mr. COLE. Absolutely. If they are physically obstructing access, absolutely.

Mr. SENSENBRENNER. OK.

Mr. SCHUMER. I would just tell—I will extend you the time, if the gentleman will yield.

Mr. SENSENBRENNER. Well, we have got to vote, so that kind of puts a cap on this.

The final question I would like to ask is, the bill that Mr. Schumer has authored and which has been reported out of the subcommittee contains a labor picketing exemption. Does that mean that if the unionized workers of a hospital containing an abortion clinic go out on strike and picket the hospital and obstruct people from going into the hospital because of the labor dispute that is going on there, they are exempt, right?

Mr. COLE. As I stated in my written statement—and I would like my written statement introduced into the record—I believe that the labor picketing exemption is unconstitutional, and I would urge that in any bill that is ultimately approved that the labor picketing exemption be taken out.

Mr. SENSENBRENNER. The bill as reported was unconstitutional. Is that what you are saying?

Mr. COLE. The labor picketing exemption I think is constitutionally problematic. I think it can be severed very easily in conference and ought to be.

Mr. SENSENBRENNER. But if it stays in—and you know and I know what the votes are in both the Senate and the House of Representatives—doesn't that set up selective criminalization of the same activity based upon the content of the sign, that someone who is out on a labor dispute saying X hospital is unfair to its workers on strike is treated differently before the law from someone who is picketing the hospital with the abortion clinic that says, "Stop abortion now. Don't kill your baby?"

Mr. COLE. As I stated in my statement, I believe that the labor picketing exemption is unconstitutional. I believe it should be removed. If it is removed, there is nothing unconstitutional about this bill.

Mr. SENSENBRENNER. With that, Mr. Chairman, I will rest my case since the majority's witness has impeached the constitutionality of your own legislation. Thank you.

Mr. SCHUMER. Wait and see what we do in full committee.

I would just make one point to more or less the audience. Mr. Sensenbrenner brought up the antiwar protesters. I was against the war in Vietnam when I was in college, and yet I opposed the

SDS and others blockading buildings to do that and formed a whole group in college that urged the administration not to let them blockade. That was an issue that I certainly believed very deeply in, but it wasn't their right, just as it isn't anybody's right to say their morality supersedes the democratically elected process.

I thank Professor Cole, I thank Mr. Helm, I thank all the witnesses, and this hearing is hereby adjourned. I want to also thank the court reporter for doing a good job. They are the unsung heroes. Today it is Alma Kristoffersen.

Thank you, Alma.

[Whereupon, at 4:14 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING

Clinic and Home Harassment: A History

Beginning in 1989, Midwest Health Center for Women has been the focus of a local anti-choice group calling themselves Pro-Life Action Ministries. In 1990, individuals of the organization shifted their attention to me at my home. Activities were at times concurrent at my home and at the clinic.

The expenditure of time, energy, and loss of creativity sometimes becomes overwhelming to say nothing of the financial obligation. The alternative is to do nothing. The investment in time and energy is the same either way. Doing nothing, however, guarantees continued harassment.

Jeri Rasmussen
Executive Director, MHCW

Prepared for NAF Annual Meeting
Washington, DC April, 1993

Summary

of

Achievements

Permanent
Injunction for
Clinic - 1991

Shoreview Ordinance
prohibits targeted
residential picketing.

Oct. '90-Oct.'92
Restraining
order at home.

Shoreview est.
a no-picketing
zone - 1992

Shoreview
prohibits
stalking

Minnesota Legislature
considering a clinic
access statute.

Minnesota Legislature likely to enact a
strong no-stalking statute embodying
elements of the Shoreview ordinances.

Legal Events

Other Events

Personal Harassment

1989

July 20, 1989 - Judge convicts trespassers. He informs them that their convictions are no more serious than a traffic ticket and that he would like to live next door to any one of them. Prior to the hearing, the trespassers held an open prayer session in the courtroom.



June 23, 1989 -
153 trespassers are arrested
at Midwest Health Center for
Women.



1989 - Former classmate wrote letter asking Rasmussen to give up "killing" and return to former, "sweet" self. Classmate was prominently featured in a local anti-choice publication as part of an organization with a mission to focus harassment on Midwest Health Center for Women. She subsequently provided her associates with Rasmussen's home address. (See January, 1990 box)



Legal Events

Other Events

1990

Personal Harassment

January, 1990 - Pro-Life Action Ministries announces the launching of new "sidewalk counseling" efforts focused on Midwest.



April 2, 1990 - Ordinance 532 prohibiting targeted residential picketing requested by Rasmussen was enacted by the Shoreview City Council.



June, 1990 - Initiated litigation to obtain an injunction protecting the clinic and received a temporary injunction. Harassment activity abated somewhat while legal action to obtain a permanent injunction was pending.



August 1, 1990 - Minnesota legislature enacts statute that allows an individual being harassed to obtain a restraining order. Rasmussen sought and received a temporary restraining order on August 29, 1990.



October 24, 1990 - Obtained a two year restraining order.



March - May, 1990 - Phone threats at my home.



March, 1990 - Picketing and harassment begins. Members of various anti-choice groups at my home on March 10, 17, 24, & 31. Neighborhood and area shopping center leafleted urging people to "visit" me at my home or office and tell me to stop killing babies.



April 11, 1990 - Trespass at my home and anti-choice poster left at my front door.



April 12, 1990 - Bizarre call warning about someone with a gun requesting vehicle registration information regarding my vehicle.



April 16, 1990 - Receive anti-choice letter advising bible reading among other remedies.



May 1, 1990 - Verbally accosted in restaurant. Later learn that the harasser is a St. Paul firefighter who has been videotaping my home.



May 20, 1990 - Home harassed and picketed by 10-15 individuals with signs identifying me by name. Police responded but no police reports or arrests made. Police continued to refuse to identify anyone.



June 12, 1990 - Harassed at home by 8 or more individuals picketing with signs identifying Rasmussen by name. Police responded but no reports or arrests. Police refused to identify any picketers.



July 19, 1990 - Harassed at home and picketed by 15-18 individuals with gruesome signs. Property photographed from many different angles. Picketers interfered with traffic and neighbors complained to police. Rasmussen I.D. on signs. Once again, police make no arrests and did not ID.



July 22, 1990 - Rasmussen verbally accosted on walking path near home.



August 19, 1990 - Rasmussen verbally accosted at shopping center.



October 13, 1990 - Harassed at home and picketed.



October 27, 1990 - Harassed at home and picketed. Apparent testing of the restraining order. Arrests were made but judge dismissed all claims.



Legal Events

Other Events

Personal Harassment

1991

May 13, 14, & 15, 1991 - Day long depositions are taken.



May, 1991 - Hearing for clinic injunction. Strongly rebuking the harassers. Judge orders them to stay away from staff and physicians' homes.



June, 1991 - Clinic obtains a permanent injunction covering John and Jane Doe as well as those specifically named as defendants. Judge lifts ban on picketing at staff homes.



August, 1991 - We lose two physicians.



February 1, 1991 - Leafletting of my neighborhood with photo of me and a purported severed head of a fetus. Harassing phone calls in the middle of the night.



February 9, 1991 - Harassed at home by 8 - 12 picketers in violation of restraining order. Reported to police. No arrests. No identification.



May 4, 1991 - More than 40 harassers at my home. No arrests. Police would not identify anyone.



May 18, 1991 - 15-20 male harassers at my home - one with an attack dog. Police would not identify anyone and refused to view the situation as threatening. Later learn that individual with dog had previously been arrested in Fargo.



1992

February 1, 1992 - Pamphlets with a photo of me and the purported head of a fetus are left in my neighborhood. Late night call from the harassers.



February 8, 1992 - Leaflets distributed in my neighborhood identifying me as a baby killer and listing my address, home, and business phone numbers.



March 7, 1992 - Harassers at home videotaping and name calling. Police arrested one individual at my insistence for violating the court order. Others not ID'd. In addition, a fake priest using a false name coerced police into helping him issue a citizen's arrest against me in the driveway of my home for disorderly conduct. Charges dismissed after two court appearances.



March 14, 1992 - Harassed at home by 6 or 7 individuals carrying signs showing fetuses in various stages of development. Sheriff's deputies were called and one individual was arrested at my insistence for violating the restraining order. Others not ID'd.



June 11, 1992 - Individuals with signs at my home intimidating visiting relatives.




Legal Events

Other Events

Personal Harassment


October 14, 1992 - Returned to court to obtain a new restraining order (old order to expire on Oct. 24). Temporary restraining order granted while litigation is pending. Still in progress.




October 24, 1992 - Restraining order expires.




October 28, 1992 - First day of hearing for permanent restraining order.




November 20, 1992 - Second day of hearing for permanent restraining order.



December, 1992 - Two individuals sentenced for violating the court order in March of 1992.




August 17, 1992 - Hearing request by Rasmussen for ordinance to establish a no-picketing zone and a no stalking ordinance.




December, 1992 - New stalking ordinance enacted, first in Minnesota, by Shoreview city council.




June 12, 1992 - Stalked in a deliberate and intimidating manner from home in Shoreview to the clinic in Minneapolis. Individual later identified as a St. Paul fireman. Incident reported to the police but no arrest or follow-up.




July 30, 1992 - Eight to ten harassers at my home. A sign is left on my property identifying me by name.




August 19, 1992 - Harassed by two young women in a clothing store. May have been followed.



August 22, 1992 - Class reunion is leafleted and picketed. Attempts made to steal class records by individuals posing as documentary film makers.




December, 1992 - No picketing zone established in neighborhood with signs posted.




1993


January 29, 1993 - Third day of hearing for permanent restraining order.




March 11, 1993 - Dr. Gunn murdered.




January 20, 1993 - No-Picketing Zone sign defaced with the words "baby killer."




March 13, 1993 - Roofing nails in driveway.




March 14, 1993 - Early A.M. call with message to "quit killing babies, Jon." 7:00 A.M. - large hunk of concrete thrown through dining room window with note, "don't kill babies." Reported to police. Very limited investigation. No arrests.




March 19, 1993 - Fourth day of hearing for permanent restraining order.



March 31, 1993 - Fifth and last day of hearing for permanent restraining order.




April 23, 1993 - Briefs to the court due. Judge to rule within 90 days.



March - April, 1993 - Minnesota legislature considering the following:

- Anti-Stalking legislation based on the Shoreview ordinance (pending)
- Clinic Access statute (pending)



TESTIMONY OF ROBERT ABRAMS
ATTORNEY GENERAL OF THE STATE OF NEW YORK

I want to thank this distinguished subcommittee for giving me the opportunity to submit this testimony on the Freedom of Access to Clinic Entrances Act of 1993, H.R. 796, and to offer my support for the quick passage of a law that will protect women, physicians and other health personnel from violence aimed at family planning clinics and other health facilities that perform abortions. The Supreme Court's unfortunate decision in Bray v. Alexandria Women's Health Clinic¹ and the recent assassination of Dr. David Gunn in Pensacola, Florida, make ever more clear the urgent need for a federal law securing relief to women from those would who deprive them of access to reproductive health care.

For many years, I have urged the federal government actively to intervene into the national problem of violence against reproductive health clinics. In 1985, I wrote to then Assistant Attorney General William Bradford Reynolds, requesting that the Justice Department invoke its authority under 18 U.S.C. § 241 to investigate and prosecute those responsible for a rash of bombings and other terroristic attacks on abortion clinics. Like many others, I was dismayed that the Reagan Justice Department refused to exercise its considerable powers and resources to ensure safe passage to physicians at abortion clinics and the patients who use their services.

In 1991, together with Virginia's Attorney General, Mary Sue Terry, I submitted an amicus curiae brief in the Bray case, arguing that the Ku Klux Klan Act, 42 U.S.C. § 1985(3), provides

¹113 S. Ct. 753(1993)

a federal remedy against those who blockade and otherwise prevent access to reproductive health clinics. The Bush Justice Department cast its lot with outlaws, arguing that the Ku Klux Klan Act does not provide relief from the conspiratorial activities of Operation Rescue and similar organizations.

Unfortunately, a majority of a sharply divided Supreme Court sided with the Bush Administration. On the record before the Court in Bray, the majority held that Operation Rescue's activities were not motivated by a "class-based animus," arguing that that organization's practice of blocking access to reproductive health care which only women need does not constitute sex-based discrimination. Accordingly, it held that the plaintiffs in that case had failed to state a claim for relief under the "deprivation clause" of 42 U.S.C. § 1985(3). Congress must move swiftly to rectify that wrong-headed ruling.

Experience in New York City, Buffalo, Dobbs Ferry and elsewhere demonstrates that, without the resources of the federal government, it is very difficult, if not impossible, to protect against Operation Rescue's nationwide conspiracy to prevent access to clinics. Two years ago, in Wichita, Kansas, Operation Rescue succeeded in preventing access to one of the few clinics in the Midwest that perform second trimester abortions. State and local officials sympathetic to Operation Rescue's aims all but withdrew local law enforcement protection from the clinic and lawlessness prevailed. Only when United States District Judge Kelly directed United States Marshals to enforce his injunction was order restored

to that city.

Last year, we in New York narrowly averted a similar crisis when Operation Rescue descended on Buffalo and surrounding communities. In fact, Mayor James Griffin of Buffalo extended an opened arm invitation to Operation Rescue, promising that his police force would handle lawbreakers with kid gloves when they interfered with access to the clinics in that city. After my office threatened to sue him under 42 U.S.C. § 1986, which enjoins public officials to take affirmative steps to protect persons from violations of section 1985(3), Mayor Griffin publicly pledged that the Buffalo Police Department would move appropriately against blockaders. My office did sue Operation Rescue National and several of its leaders, including Randall Terry, and obtained a temporary restraining order protecting access to the clinics. That action, a companion case instituted by pro-choice activists, the heroic efforts of clinic defenders, the careful planning of local law enforcement officials and United States District Judge Richard Arcara's swift action to hold Operation Rescue leaders in criminal contempt combined to maintain order in Buffalo during a two-week siege. No clinic was closed by a blockade for even a single minute.

Three months later, my office sued Operation Rescue National and Randall Terry and other members of his conspiracy to prevent blockades of clinics in New York City during the Democratic National Convention. Assisted by a temporary restraining order and a preliminary injunction issued by United States District Judge

Robert J. Ward, the New York City Police Department and clinic defenders were able to prevent all but two short-lived clinic blockades that week. Less than a week after Operation Rescue members blockaded those clinics, my office commenced civil contempt proceedings before Judge Ward against seven organizational and individual contemnors. Within two weeks of the blockades, my office had conducted a three-day trial. Those responsible for the blockades received stiff contempt sanctions. In all, \$100,000 in civil penalties payable to the United States were levied against the blockaders.² Our efforts dealt Operation Rescue a major defeat in New York. But, without the force of federal authority to back them up, the outcome may well have been different.³

²In his preliminary injunction, Judge Ward also enjoined Randall Terry and other defendants not to present or confront then Governor Bill Clinton and Senator Albert Gore with a fetus or fetal remains, acts which Terry and his cohorts had been threatening for weeks. When Terry and other Operation Rescue members violated that order, and the United States Attorney for the Southern District of New York declined the district court's request that it prosecute Mr. Terry for criminal contempt, Judge Ward appointed my office to prosecute the criminal action on behalf of the United States. Randall Terry was convicted of criminal contempt on March 5, 1993 in United States v. Randall Terry, 92 Crim. Misc. #1, Pg. 46 (S.D.N.Y.). He will be sentenced on May 21, 1993 and can be imprisoned for up to six months.

³Both Bray and recent rulings by lower federal courts suggest that there may be a continued role for § 1985(3) in efforts to redress clinic blockades. In Town of West Hartford v. Operations Rescue, 1993 WL 127175 (2d Cir., April 21, 1993), a unanimous Court of Appeals declined to dismiss an action brought under the "deprivation clause" of § 1985(3), holding that the Bray Court's finding that there was no class-based animus in that case was limited to the record before it. The Court of Appeals remanded the matter to the trial court for further factual findings on whether the defendants in the Hartford case are motivated by a class-based animus and intended to deprive women of constitutionally secured rights.

H.R. 796 is an important step in the direction of redressing the noxious Bray decision and securing clinic access against the lawless conspiracy of Operation Rescue and others. However, I believe it can be improved by adding a provision expressly authorizing state attorneys general to bring civil enforcement actions under it. I do not doubt that, in its present form, my office and the offices of other state attorneys general could invoke the states' authority as parens patriae⁴ and sue under

In addition, the Bray majority expressly declined to consider on the facts there whether a claim was stated under the "preventing or hindering clause" of § 1985(3). Bray, 113 S. Ct. at 765. Four justices, however, concluded that a valid claim was stated under the preventing and hindering clause. See id., at 770-79 (Souter, J., concurring in part and dissenting in part); 795-98 (Stevens and Blackmun, JJ., dissenting); 804-05 (O'Connor and Blackmun, JJ., dissenting). At least one district court has since held that an allegation under the preventing or hindering clause would support federal jurisdiction. See United States v. Terry, 92 Crim. Misc. #1, Pg. 46, slip op. at 5 n.4 (S.D.N.Y., March 10, 1993).

Nevertheless, passage of legislation like FACES is essential to ending unnecessary legal wrangling over the jurisdiction of the federal courts. It would also create much needed federal criminal penalties for conduct obstructing access to reproductive health care.

⁴The Supreme Court has long recognized the propriety of states suing as parens patriae to redress injuries to the health and welfare of their inhabitants, and has permitted such suits for relief from wide-spread discrimination. See Alfred L. Snapp & Sons, Inc. v. Puerto Rico, 458 U.S. 592 (1982). My office often invokes the State's parens patriae standing to sue in federal court to remedy patterns and practices of discrimination. E.g., People by Abrams v. 11 Cornwell Co., 695 F.2d 34 (2d Cir. 1982), modified on other grounds, 718 F.2d 22 (2d Cir. 1983); Support Ministries v. Village of Waterford, 799 F. Supp. 272 (N.D.N.Y. 1992); People of the State of New York v. Merlino, et al., 88 Civ. 3133 (S.D.N.Y. August 18, 1990); People of the State of New York v. The Ocean Club, 82 Civ. 0790 (E.D.N.Y. Jan. 24, 1984); People of the State of New York v. Data Butterfield, 80 Civ. 0365 (E.D.N.Y. June 27, 1980). See also Commonwealth of Pennsylvania v. Porter, 659 F. 2d

the civil provisions of proposed 18 U.S.C. § 248. Judge Arcara held in People of the State of New York v. Operation Rescue National, et al., 92-CV- 0147A, slip. op (W.D.N.Y. April 17, 1992), a copy of which is annexed, that the State of New York could exercise its parens patriae authority in a suit under section 1985(3). Judge Ward has reached a similar conclusion. United States v. Terry, 806 F. Supp. 490, 494 (S.D.N.Y. 1992) (In bringing People of the State of New York v. Operation Rescue National, et al., 92 Civ. 4884 (S.D.N.Y.), "[r]ather than representing the interests of a private party, the Attorney General acts as parens patriae, asserting a 'quasi-sovereign interest' for the common good of the people of the State of New York.")

Nevertheless, I urge the Subcommittee and Congress as a whole expressly to list state attorneys general as "aggrieved persons" or "qualified plaintiffs" who may bring suit under the Freedom of Access Act.⁵ An express authorization will ensure that my office and those of other attorneys general will avoid needless jurisdictional disputes in the lawsuits that are certain to be brought once the law is enacted. In that way, we can obtain swifter and more certain relief from the continuing lawlessness

306 (3d Cir. 1981), cert. denied, 458 U.S. 1121 (1982); Commonwealth of Puerto Rico ex rel. Quiros v. Brankamp, 654 F. 2d 212 (2d Cir. 1981), cert. denied, 458 U.S. 1121 (1982); Commonwealth of Pennsylvania v. Flaherty, 404 F. Supp. 1022 (W.D. Pa. 1975); Commonwealth of Pennsylvania v. Glickman, 370 F. Supp. 724 (W.D. Pa. 1974).

⁵There is ample precedent for express statutory authorization enabling state attorneys general affirmatively to invoke federal law in federal court. See 15 U.S.C. § 15c(authorizing state attorneys general to sue to enforce Clayton Antitrust Act).

that Operation Rescue and its adherents promise.

In that regard, I bring to your attention a resolution endorsed by the National Association of Attorneys General in its 1993 Spring meeting in Washington last month. Taking note of the Bray decision and Congress's consideration of H.R. 796, NAAG resolved to "[u]rge[] Congress to adopt appropriate legislation to protect women, physicians and other health personnel from violence aimed at family planning clinics across the country where abortions are performed" and called upon Congress to authorize state attorneys general to sue to enforce the terms of such legislation. A copy of the resolution is annexed.

I also urge this body to consider broadening the reach of the proposed legislation to provide a remedy from activities that obstruct the delivery of reproductive health services but which do not take place at a clinic site. I have in mind harassment that occurs at the residences, places of worship, schools and other places in the communities where health care providers and their families may be found. As Attorney General of New York, I have recieved reports from physicians about harassment and threats of violence against them, their colleagues and their families, and I am deeply troubled by them. Harassment occurs in many places in our State, but is a particular problem in rural areas, where reproductive services are scarce. The horrifying slaying of Dr. Gunn during organized anti-choice demonstrations directed at him -- and the few and unconvincing statements of remorse by anti-choice leaders that followed -- increase my

apprehension for the safety of this country's reproductive health providers.

That legislation must scrupulously protect the vital First Amendment rights of those who would speak against the right to choose. In seeking to secure the ability of women to exercise their reproductive freedom, we must guard against sacrificing or infringing upon the rights to speak and petition, which are so fundamental to our constitutional democracy. However, it is well-settled that the First Amendment does not protect conduct that amounts to harassment or unwarranted intrusions upon the privacy of the home. For example, the Supreme Court and state courts have repeatedly upheld laws and injunctions prohibiting "targeted picketing" at residences.⁶ "Anti-stalking" laws enacted by many states⁷ also supply guidance for the additional protection Congress may consider. In all events, it is important that Congress enact measures that will protect against conduct undertaken with the intent to prevent or discourage the delivery or obtaining of reproductive health services that obstructs the delivery of those services, even when the conduct does not occur at the health facility.

The bill now before the House and Senator Kennedy's companion bill in the Senate are vital responses to a Supreme Court

⁶Frisby v. Schultz, 487 U.S. 479 (1988); Boffard v. Barnes, 591 A.2d 699 (N.J. Super. Ch. 1991); Valenzuela v. Aquino, 800 S.W.2d 301 (Tex. App. - Corpus Christi 1990); Town of Barrington v. Blake, 568 A.2d 1015 (R.I. 1990); Klebanoff v. McMonagle, 552 A.2d 677 (Pa.Super. 1988).

⁷See, e.g., N.Y. Penal Law § 240.25.

decision that must be rectified. I urge Congress to move as swiftly as possible to enact legislation securing access to reproductive health services against violent obstruction, so that a fundamental constitutional right does not become illusory.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
by ROBERT ABRAMS, Attorney General of
the State of New York,

Plaintiff,

DECISION AND ORDER
92-CV-0147A

v.

OPERATION RESCUE NATIONAL, et al.,

Defendants.

DECISION
AND
ORDER

RICHARD J. ARCARA
District Judge

FILED
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U.S. DISTRICT COURT
W.D.N.Y. - BUFFALO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
by ROBERT ABRAMS, Attorney General of
the State of New York,

Plaintiffs,

v.

DECISION AND ORDER
Civ-92-147A

OPERATION RESCUE NATIONAL, ET AL.,

Defendants.

INTRODUCTION

Currently before the Court are the following motions: (1) defendants' motion to dismiss the action, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)¹; (2) plaintiffs' motion to consolidate this action with Pro-Choice Network, et al. v. Project Rescue Western New York, et al., Civ-90-1004A ("Pro-Choice Network"), pursuant to Fed. R. Civ. P. 42(a); and (3) plaintiffs' motion for a preliminary injunction, pursuant to Fed. R. Civ. P. 65. Oral argument on the motions was heard on April 10 and April 15, 1992.

Defendants Operation Rescue National, Keith Tucci, Randall Terry, Rev. Paul Schenck and Rev. Robert Schenck are represented in this action by James M. Henderson, Sr., Esq. and John Stepanovich, Esq. Defendants Christian Activist Lifeline, Betty Pasco, Johnny

¹ The motion to dismiss was originally brought on behalf of defendants Operation Rescue National, Keith Tucci, Randall Terry, Rev. Paul Schenck and Rev. Robert Schenck only. However, at oral argument, the Court granted the oral request of defendants Christian Activist Lifeline, Betty Pasco, Johnny Hunter, Karen Swallow Prior and Nancy Walker to join in the motion to dismiss.

Hunter, Karen Swallow Prior and Nancy Walker are represented in this action by William J. Ostrowski, Esq. Defendants Pro-Life Rescue Movement of Western New York and Friends to the Weary did not appear at oral argument and have not filed either an answer or a motion.

After reviewing the submissions of the parties and hearing argument from counsel, the Court: (1) finds that the State of New York has standing in this case under the doctrine of parens patriae; (2) reserves decision on the remainder of defendants' motion to dismiss; (3) reserves decision on plaintiffs' motion to consolidate; and (4) reserves decision on plaintiffs' motion for a preliminary injunction until after an evidentiary hearing.

DISCUSSION

I. Motion to Dismiss

The Attorney General of the State of New York, Robert Abrams, has commenced this action on behalf of the People of the State of New York and seeks to enjoin defendants from blockading any facility where abortions are performed, abusing or intimidating patients or staff of such facilities and harassing physicians who perform abortions. Defendants consist of eight individuals and four organizations who are opposed to abortion and dedicated to the "pro-life" movement.

Defendants contend that this action should be dismissed because the State lacks standing. The State, however, contends that it has standing under the doctrine of parens patriae. The

Court agrees with the State.

The Second Circuit has affirmed that the State of New York as parens patriae has standing to redress civil rights violations directed against its citizens by bringing suit under 42 U.S.C. § 1985(3). People of the State of New York by Robert Abrams v. Eleven Cornwell Co., 695 F.2d 34 (2d Cir. 1982), modified on other grounds, 718 F.2d 22 (2d Cir. 1983) (en banc). In Cornwell, the court recognized that a state is entitled to parens patriae standing if: (1) it has alleged injury to a "quasi-sovereign" interest; (2) it has alleged injury to a sufficiently substantial segment of its population; and (3) individuals cannot obtain complete relief through a private suit. Id. at 38-40. Applying this standard, the Court finds that the State of New York has parens patriae standing in this case.

To maintain a parens patriae action, the State must allege an injury to a "quasi-sovereign" interest. Id. at 38; see also Commonwealth of Puerto Rico ex rel. Quiros v. Bramkamp, 654 F.2d 212, 215 (2d Cir. 1981), cert. denied, 458 U.S. 1121 (1982). The Supreme Court has held that "a State has a quasi-sovereign interest in the health and well-being--both physical and economic--of its residents in general." Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 607 (1982). In this case, the State asserts two forms of a "quasi-sovereign" interest in the health and well-being of its citizens: (1) an interest in protecting women from serious risks to their health; and (2) an interest in protecting women from invidious discrimination.

The conspiracy to prevent women from obtaining access to reproductive health services alleged against defendants in this case is similar to the conspiracy alleged against defendants in the Pro-Choice Network case. In Pro-Choice Network, the Court found that such a conspiracy endangers the physical health and welfare of women in the Western District of New York. See Pro-Choice Network Decision and Order dated February 14, 1992, at 20; see also New York State NOW v. Terry, 886 F.2d 1339, 1362 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990). Thus, in this case, the State has a "quasi-sovereign" interest in protecting women from the serious health risks that could result from the type of conduct alleged against defendants.

In addition to its "quasi-sovereign" interest in protecting women from serious health risks, the State has a "quasi-sovereign" interest in protecting women from invidious discrimination. In the Snapp case, the Commonwealth of Puerto Rico filed suit against individuals and companies engaged in the apple industry alleging that they discriminated against Puerto Rican migrant workers based on their ethnicity. The district court dismissed the complaint, holding that Puerto Rico lacked standing. The Court of Appeals found that Puerto Rico had standing under the doctrine of parens patriae and reversed the lower court.

The Supreme Court, in affirming the Court of Appeals, held that Puerto Rico had standing under the doctrine of parens patriae. The Court found that Puerto Rico had a "quasi-sovereign" interest in protecting its citizens from invidious discrimination. Snapp,

458 U.S. at 609. It stated that: "This Court has had too much experience with the political, social, and moral damage of discrimination not to recognize that a State has a substantial interest in assuring its residents that it will act to protect them from these evils." *Id.* Following the Supreme Court, the Second Circuit has held that the State of New York has a "quasi-sovereign" interest from protecting its residents from the harmful effects of discrimination. Cornwell, 695 F.2d at 38-39.

In this case, the State alleges that defendants are motivated by a class-based invidious discriminatory animus against women seeking abortions. The State also alleges that defendants have conspired to deprive women of their civil rights, including their constitutional right to travel and their right to have an abortion. Both this Court and the Second Circuit have held that such a conspiracy violates § 1985(3). See Pro-Choice Network Decision and Order dated February 14, 1992, at 23, 26, 28; Terry, 886 F.2d at 1359-61. Thus, the State has a "quasi-sovereign" interest in protecting women from invidious discrimination and securing for them their constitutional rights.

The Court also finds that defendants' alleged discriminatory conduct inflicts injury on a substantial portion of the population. In determining whether parens patriae standing is appropriate, courts have declined to set "definitive limits on the proportion of the population of the State that must be adversely effected by the challenged behavior". Snapp, 458 U.S. at 607. As the Court of Appeals observed in Snapp:

There has never been cast a hard and fast game of numbers. Parens patriae standing is appropriate where a sovereign seeks to protect a vital aspect of the general welfare of a substantial portion of its citizenry from serious, harmful, offensive conduct. It is the magnitude and the pervasiveness of the societal harm that must be weighed -- not the directness of the injury to particular individuals.

Commonwealth of Puerto Rico v. Alfred L. Snapp & Sons, Inc., 632 F.2d 365, 370 (4th Cir. 1980), aff'd, 458 U.S. 592 (1982). The Second Circuit has held that when considering whether a State has alleged injury to a sufficiently substantial segment of its population, a court must "consider 'indirect effects of the injury' as well as direct ones. . . ." Cornwell, 695 F.2d at 39 (quoting Snapp, 458 U.S. at 607).

In this case, the State alleges that defendants plan to force area abortion providers to cease operation. Such conduct will clearly injure numerous women who wish to exercise their constitutional right to choose to have an abortion. That harm, in itself, is sufficiently substantial to warrant the State's involvement. But the magnitude and persuasiveness of defendants' alleged conduct goes well beyond the individual women or individual health care providers who will be directly injured by their conspiracy in this district. Defendants' alleged conduct could harm numerous other women who choose to have abortions in New York by encouraging others to "blockade" or otherwise obstruct access to abortion clinics throughout the State. Defendants' alleged conspiracy thus threatens to harm the health and well-being of a substantial number of women throughout New York.

Finally, the third prong of the parens patriae test, whether individuals can obtain complete relief through a private suit, presents a closer question in this case. Defendants argue that the State cannot satisfy the third prong because the private plaintiffs in the Pro-Choice Network case can, and already have, obtained complete relief. The State's parens patriae standing, however, is not diminished merely because private plaintiffs have commenced litigation seeking related relief.

The Second Circuit has held that "a state seeking to proceed as parens patriae need not demonstrate the inability of private persons to obtain relief if parens patriae standing is otherwise indicated." Bramkamp, 654 F.2d at 217 (citations omitted). In Bramkamp, ethnic Puerto Ricans were denied employment by New York apple growers and, as in Snapp, both the Commonwealth of Puerto Rico and the individual workers brought suit. Id. The court held that the interests of individual workers, who were concerned with their own injuries, were not coextensive with the interests of the general populace, which only the Commonwealth could represent. Id. There was no assurance, for example, that the workers would hold all discriminators accountable, that they would actively pursue relief against widespread and future discrimination, or that they could bear the costs of a lawsuit that would obtain complete relief. The Court stated that "[t]he vindication of the rights of all future migrant laborers in the public of Puerto Rico should not be made dependent upon the possible relief obtained by the individual workers". Id.

Indeed, in almost every parens patriae action, remedies for private parties are available and are frequently sought. For example, in both Snapp and Bramkamp, individual workers had brought their own actions. To argue that the availability of private remedies forecloses the State from suing to enjoin harm to the health and well-being of its citizens would contradict Snapp's holding that the State has a "quasi-sovereign" interest in protecting its citizens from those harms.

Women throughout the State of New York should be able to rely upon the Attorney General, acting as parens patriae, to secure for them their rights under the law and should not have to depend upon the actions and potentially limited resources of private parties. There is no assurance that the private litigants in the Pro Choice Network case will have adequate resources for, or an interest in, vindicating the rights of all persons who could be injured by defendants' alleged conduct. Thus, the State has standing to litigate this action as parens patriae on behalf of the People of the State of New York.

With regard to the remainder of defendants' motion to dismiss, the Court will reserve decision until after an evidentiary hearing on plaintiffs' motion for a preliminary injunction.

II. Motion to Consolidate

Plaintiffs have moved to consolidate this action with the Pro-Choice Network action, pursuant to Fed. R. Civ. P. 42(a). The Court will reserve decision on this motion.

III. Plaintiffs' Motion for a Preliminary Injunction

Plaintiffs have moved for preliminary injunction, pursuant to Fed. R. Civ. P. 65. In support of its motion, plaintiffs have submitted the affidavit of Robert R. Reed, Esq., Assistant Attorney General for the State of New York, along with several exhibits consisting of various newspaper articles, literature allegedly distributed by defendants and a transcript of a television program. Mr. Reed, in his affidavit, asserts that it is the declared intention of the defendants to conduct massive "blockades" at facilities where abortions are performed in the Western District of New York during the period April 20, 1992 to May 4, 1992. These activities have been referred to in the literature allegedly distributed by defendants as the "Spring of Life."

The Court finds that the evidence submitted in support of the preliminary injunction is insufficient to warrant such an injunction at this time and that an evidentiary hearing is required. See Fireman's Fund Ins. Co. v. Leslie & Elliot Co., 867 F.2d 150 (2d Cir. 1989). The Court will schedule such a hearing at its earliest convenient date. This delay should not unduly prejudice plaintiffs because there is already a preliminary injunction in place in the Pro-Choice Network case which provides almost all of the same relief that plaintiffs here seek.

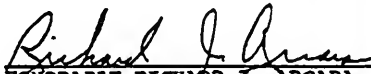
If, during the interim, plaintiffs determine that there is a need for some sort of immediate relief, they may make a written application for a temporary restraining order, pursuant to Fed. R. Civ. P. 65, or may move to intervene in the Pro-Choice Network

case, pursuant to Fed. R. Civ. P. 24(b).

CONCLUSION

For the reasons stated, the Court: (1) finds that the State of New York has standing in this case under the doctrine of parens patriae; (2) reserves decision on the remainder of defendants' motion to dismiss; (3) reserves decision on plaintiffs' motion to consolidate; and (4) reserves decision on plaintiffs' motion for a preliminary injunction until after an evidentiary hearing.

It is so ordered.


HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: April 17, 1992

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Adopted

Spring Meeting
March 28-30, 1993
Washington, D.C.

RESOLUTION

TO SUPPORT LEGISLATION TO PROTECT PATIENTS AND HEALTH CARE
PERSONNEL AT FAMILY PLANNING CLINICS

WHEREAS, as chief legal officers for our respective states, we take pride in our diverse communities, their historic respect for life and property, and the American tradition of open and peaceful discussion of issues of public policy; and

WHEREAS, we strongly support every citizen's constitutional freedom of speech, which includes peaceful, legal public witness, assembly and picketing; and

WHEREAS, we recognize that many citizens of the country hold deep convictions regarding the abortion issue; and

WHEREAS, bombing, arson, murder and any other acts of criminal violence are clearly not appropriate means of addressing issues of public policy in the United States; and

WHEREAS, the recent murder of Dr. Gunn outside his clinic in Florida is the latest example of violence against family planning clinics; and

WHEREAS, since 1980 in the United States, over 400 bombings, arsons and acts of vandalism have been directed against family planning clinics; and

WHEREAS, the recent United States Supreme Court ruling in Bray vs. Alexandria, holding that federal courts have no jurisdiction under existing civil rights laws to act to protect patients and employees of family planning facilities, made clear the need for Congress to act; and

WHEREAS, the Congress is considering legislation such as H.R. 796, The Freedom of Access to Clinic Entrances Act of 1993, which would, among other things;

1. Make assaults and attacks on medical personnel and property at family planning facilities a federal criminal offense and make clear the federal law enforcements' power to act.

2. Establishes a private right of action for parties injured by such criminal conduct.

3. Authorizes the United States Attorney General to bring civil suits to obtain injunctions against offensive conduct, seek damages for the victims, and impose stiff fines on the perpetrators; and

WHEREAS, many individuals including United States Attorney General Janet Reno have already spoken out forcefully in support of this sensible legislation;

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1. While not taking a public position on the abortion issue, condemns any and all acts of criminal violence directed against family planning clinics; and

2. Urges Congress to adopt legislation designed to protect women, physicians and other health personnel from violence aimed at family planning clinics across the country where abortions are performed, without unduly infringing on the right to peaceful protest; and

3. Commends those who pursue peaceful, legal discussion of the abortion issue and appeals to all citizens concerned about the abortion issue to conduct all public discussions in a peaceful and legal manner; and

4. Urges Congress to expressly authorize state Attorneys General to enforce in the federal courts in their states the provisions of any federal law aimed at violence at family planning facilities; and

5. Authorizes its Executive Director and General Counsel to transmit these views to appropriate members of the Administration, Congress, and other interested individuals and associations.

TESTIMONY OF JANET RENO, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman and members of the Committee, it is a distinct privilege to appear before you regarding the very important matter of ensuring that women have an unobstructed opportunity to choose whether or not to have an abortion. When I appeared before the Senate Judiciary Committee as the President's nominee for the office of Attorney General, this subject was very much on my mind because of the tragic killing of Dr. David Gunn outside of a clinic in Pensacola in my home state. I promised the members of the Judiciary Committee that, if I were confirmed as Attorney General, I would undertake a review of existing federal law to determine what could be done in this area.

Immediately upon assuming office, I directed attorneys in the Civil Rights Division and the Criminal Division of the Department of Justice to examine existing law and report back to me. They did so and their unanimous judgment was that existing federal laws, while perhaps applicable in some instances, were inadequate. I, thereupon, instructed them to cooperate closely with members of Congress to assist in crafting the best possible legislation to remedy this deficiency. I emphasized that the legislation must secure the rights of women seeking reproductive health services and the individuals who provide those services, while respecting the First Amendment rights of those who oppose abortion to express that opposition in meaningful ways. I also stated that passage of this legislation would be one of the Department's top priorities. I remain firm in that commitment.

Shortly after our staffs met for the first time, Chairman Kennedy introduced S. 636. I am very pleased to report my strong

endorsement of this legislation. Our staffs have met subsequently to discuss fine-tuning of the bill and I am told that the spirit of those meetings has been extremely cooperative and productive. The Department is convinced that S. 636 is constitutional and, with minor changes, will effectively ensure women access to abortion without suppressing the legitimate activities of those who oppose abortion.

S. 636 is modeled closely on 18 U.S.C. 245, which prohibits the use of force or threat of force to interfere with an individual's exercise of certain federally protected rights because of the victim's race, color, religion, or national origin. The comparable core of Section 3 of S. 636 would prohibit the use of force or threat of force to interfere intentionally with a person because she was "obtaining abortion services" or "lawfully aiding another person to obtain abortion services." It would also prohibit an individual from intentionally damaging or destroying the property of a medical facility because the facility provides abortion services. In our view, with one minor change, this section very effectively addresses the problem that brings us here today. Although we gather that the phrase "lawfully aiding another person to obtain abortion services" is intended to protect abortion providers, as well as others, we think that purpose would be accomplished more directly by simply adding the phrase "or providing" after "obtaining". The section would then prohibit interference with someone who was "obtaining or providing abortion services." The remainder of the section should be preserved

intact.

Need for Federal Legislation

A woman's right to choose whether to terminate a pregnancy is a fundamental right protected by the Constitution. While polls suggest that a substantial majority of Americans support that right, a deeply sincere minority opposes abortion. The right of individuals in that minority to express their views must be respected. The freedom that our society affords individuals to express even the most unpopular opinions is the bedrock upon which our democracy rests and makes us virtually unique. Peaceful anti-abortion protesters fit within this tradition. In recent years, however, anti-abortion activists have increased the intensity of their activities from picketing to physical blockades, sabotage of facilities, stalking and harassing abortion providers, arson, bombings, and finally culminating in the murder of Dr. Gunn. In the process, they have succeeded in shutting down abortion clinics and otherwise making it impossible for women to exercise their right to choose.

This Committee will hear far more eloquent testimony from the patients and health care providers who have been the victims of these activities than I could hope to provide. These witnesses can tell you of threats to their lives and the safety of their families, harassment in their homes and communities, massive obstruction and occupation of their workplaces, extensive property damage, and the tragedy of being denied access to scarce and time sensitive health care.

A. Scope of the Problem

This is a problem that is national in scope. It is occurring throughout the country; on the doorstep of the Nation's capital in Alexandria and Falls Church in Northern Virginia; in Pensacola and Melbourne in Florida; in West Hartford, Connecticut; in Wichita Kansas; in Fargo, North Dakota; and in Dallas, Texas, just to name a few of the more visible incidents. Moreover, much of the activity has been orchestrated by groups functioning on a nationwide scale, including, but not limited to, Operation Rescue, whose members and leadership have been involved in litigation in numerous areas of the country.^{1/} Because of this nationwide scope, the problem transcends the ability of any single local jurisdiction to address it.

The problem also exceeds the capabilities of local law enforcement in another way. Groups such as Operation Rescue have been able to marshal sufficient participants trained in tactics designed to obstruct law enforcement that they have overwhelmed the resources of local law enforcement, which has been unable even to

^{1/} See, e.g., Bray v. Alexandria Women's Health Clinic, 113 S. Ct. 753 (1993); Town of West Hartford v. Operation Rescue, No. 92-7595 (2d Cir. Apr. 21, 1993); New York State NOW v. Terry, 704 F. Supp. 1247 (S.D.N.Y.), *aff'd as modified*, 886 F.2d 1339 (2d Cir. 1989), *cert. denied*, 495 U.S. 948 (1990); Southwestern Medical Clinics of Nevada v. Operation Rescue, 744 F. Supp. 230 (D. Nev. 1989); NOW v. Operation Rescue, 726 F. Supp. 300 (D.D.C. 1989); Women's Health Care Services v. Operation Rescue - National, 773 F. Supp. 258 (D. Kan. 1991); Lucero v. Operation Rescue of Birmingham, 954 F.2d 624 (11th Cir. 1992); Volunteer Medical Clinic, Inc. v. Operation Rescue, 948 F.2d 218 (6th Cir. 1991); Town of Brookline v. Operation Rescue, 762 F. Supp. 1521 (D. Mass. 1991); National Abortion Federation v. Operation Rescue, 721 F. Supp. 1168 (C.D. Cal. 1989).

keep clinics open. A prime example is the assault on two clinics in Wichita, Kansas, in the summer of 1991 by Operation Rescue. Large numbers of activists converged on Wichita and physically blockaded the clinics. When police moved in to arrest them, they moved in baby steps and, when arrested, frequently refused to identify themselves to law enforcement officials. The clinics were closed for a week and were reopened only as a result of an injunction entered by the federal district court, which enabled federal marshals to move in. The district court found "that Operation Rescue * * * purposefully acted to interfere with the ability of the local law enforcement authorities to protect the rights of the plaintiffs and their patients." Women's Health Care Services v. Operation Rescue, 773 F. Supp. 258, 265 (D. Kan. 1991). The court concluded that "[b]y targeting Wichita as the focus of its national efforts, Operation Rescue has virtually overwhelmed the resources of the city's relatively small police forces to respond with dispatch and effectiveness." Id. at 265-266. This situation has been repeated in other jurisdictions. See, e.g., Pro-Choice Network v. Project Rescue, 799 F. Supp. 1417 (W.D.N.Y. 1992); Now v. Operation Rescue, 726 F. Supp. 1483 (E.D. Va. 1989), aff'd, 914 F.2d 582 (4th Cir. 1990), rev'd in part and vacated in part sub nom. Bray v. Alexandria Women's Health Clinic, 113 S. Ct. 753 (1993).

The Wichita court also found that "significant questions exist as to the lack of zeal displayed by the City of Wichita in defending the legal rights of the plaintiffs and their patients."

Ibid. The reluctance of local authorities to protect the rights of individuals provides a powerful justification for the enactment of federal protections that has been invoked previously by Congress in passing laws to protect civil rights.

B. The Inadequacy of Existing Federal Law

Frustrated by the inability of local law enforcement to protect their rights, abortion providers and patients have turned to federal law for assistance. Numerous cases have been reported in federal district courts filed by abortion providers seeking to enjoin interference with their activities pursuant to 42 U.S.C. 1965(3). Many of these cases also allege violations of state law, but the focus has been on Section 1985(3), a Reconstruction era civil rights law. That statute has two relevant provisions. The first prohibits conspiracies "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws." Most of the abortion-related Section 1985(3) litigation emphasized this clause.

In Bray v. Alexandria Women's Health Clinic, 113 S. Ct. 753 (1993), the Supreme Court addressed the applicability of this clause to blockades of abortion clinics. The Court had previously held that a conspiracy among private individuals would violate this provision only if (1) some racial, or perhaps other class-based, invidiously discriminatory animus underlay the conspiracy, see Griffin v. Breckenridge, 403 U.S. 88, 102 (1971); and (2) the conspiracy was aimed at interfering with rights protected against private infringement. See Carpenters v. Scott, 463 U.S. 825, 833

(1983). The Court assumed, without deciding, that animus based on gender would be reached by Section 1985(3), but it concluded that Operation Rescue activists in that case had not disfavored women by reason of their sex, but had been motivated by a desire to prevent abortions. The Court refused to equate hostility to abortion with hostility to women. The Court also held that the right to abortion, which falls under the Fourteenth Amendment, is protected by the Constitution only against state -- and not private -- infringement. The only right protected by the Constitution against private infringement that was alleged in the case was the right to travel interstate. The Court held that Operation Rescue had not acted with the conscious aim of interfering with that right. It also noted that, in any event, the right was violated only by the erection of actual barriers to interstate movement or the discriminatory treatment of interstate travelers. The Court concluded that the barriers erected at abortion clinics only impeded movement from one part of Virginia to another and that there had been no effort to discriminate between interstate and intrastate travelers.

The Court, by a vote of five to four, declined to consider whether there had been a violation of the second clause of Section 1985(3), commonly referred to as the "hindrance clause," which prohibits conspiracies with "the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws." Although the majority expressed some

concerns about the applicability of the hindrance clause to the allegations in the case, four Justices would have read the clause to provide a cause of action for the abortion clinics.

Bray doubtless limited the effectiveness of Section 1985(3) as a remedy for abortion clinic blockades and the restrictions placed by the Court on that statute warrant a congressional response. I hasten to add, however, that the Department does not view Bray as having eliminated Section 1985(3) as a tool for addressing the activities of anti-abortion activists. We recently filed a brief as amicus curiae in the Tenth Circuit in Women's Health Care Services v. Operation Rescue - National, No. 91-3250, the Wichita clinic case, opposing Operation Rescue's request that the court summarily vacate the preliminary injunction and order the case dismissed in light of Bray. Our brief, which has been made available to the Committee, argues that factual differences between this case and Bray are sufficient to preclude summary dismissal regarding the first clause of Section 1985(3) and that the meaning of the "hindrance clause" of Section 1985(3) remains unsettled and should be addressed prior to dismissal.

Therefore, while we do not view Section 1985(3) as irrelevant to this problem, it is not adequate. The first clause can only be applied where unusual facts exist. The applicability of the second clause remains an unsettled question of law, but at the very most, it will only provide a cause of action where demonstrators have so overwhelmed local authorities as to prevent them from providing the equal protection of the laws. Thus, at most, the clause will be

limited to those situations involving massive blockades of clinics and will not address other acts of violence or sabotage or the whole range of activities that occur away from clinics, but are designed to prevent individuals from obtaining abortion services.

We have been unable to identify any other federal law that would be generally applicable to private interference with a woman's right to choose. Section 241 of Title 18 protects against private conspiracies only to the extent that the conspiracies interfere with federal rights protected against private interference. The right to abortion has not been recognized as such a right. Section 242 of Title 18 does not extend to conduct by private actors, but rather requires a showing that the offensive conduct occurred "under color of law." Section 245(b)(1)(E) of Title 18 prohibits the use of force or threat of force to interfere with an individual's participation in a program or activity receiving federal financial assistance. Because federal funds may not be used for abortion services, clinics do not receive federal financial assistance for those services. Section 245(b)(3) prohibits interference with a business engaged in interstate commerce during times of "riot" or "civil disorder." The statute does not define those terms and it would be a difficult burden to prove the existence of those conditions.

Finally, in his concurring opinion in Bray, Justice Kennedy suggested that 42 U.S.C. 10501 could be used in circumstances such as those in Bray. That statute authorizes the Attorney General to provide law enforcement assistance if a state submits an

application and the assistance "is necessary to provide an adequate response to a law enforcement emergency." The assistance that can be provided is limited to "funds, equipment, training, intelligence information, and personnel." Because a state must initiate this process and because the conditions for granting assistance are stringent, this statute does not provide a significant response.

We, therefore, have concluded that existing federal law is inadequate to address this problem. Although some statutes may provide limited relief in specific circumstances, new federal authority is needed to address all of the parameters of the problem. S. 636 would do that by creating a comprehensive response that would create civil and criminal penalties for interference with access to abortion services, regardless whether that interference occurred at the site of a clinic as part of a large-scale action, or involved sabotage in the middle of the night, or involved an attack on an abortion provider in her home or car.

In sum, federal legislation is necessary. The problem is national in scope, local law enforcement has been unable to deal effectively with it, and existing federal law is inadequate to provide a complete response.

Congressional Authority to Enact S. 636

A. The Commerce Clause

Congress has authority to enact S. 636 pursuant to Article I, section 8, clause 3 of the Constitution, which gives it authority to regulate interstate commerce. That authority is broad and an exercise of it will be sustained if Congress has a rational basis

for finding that an activity affects interstate commerce and acts rationally in addressing the activity. See Model v. Virginia Surface Mining & Reclamation Ass'n, 452 U.S. 264, 276 (1961); Presault v. ICC, 494 U.S. 1, 17 (1990); Katzbach v. McClung, 379 U.S. 294, 305 (1964). In conjunction with the Necessary and Proper Clause, art. I, sec. 8, cl. 18 of the Constitution, the Commerce Clause gives Congress authority to regulate activity that affects interstate commerce, even if the activity is purely local. See Katzbach v. McClung, 379 U.S. at 301-302; NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 258 (1964); Wickard v. Filburn, 317 U.S. at 123-125. In determining whether an activity affects interstate commerce, a single event should not be viewed in isolation. Fry v. United States, 421 U.S. 542, 547 (1975); Perez v. United States, 402 U.S. 146, 152 (1971). Rather, "[e]ven activity that is purely intrastate in character may be regulated by Congress, where the activity, combined with like conduct by others similarly situated, affects commerce among the states." Fry v. United States, 421 U.S. at 547. Thus, Congress has authority to regulate a class of activities -- and even to impose criminal penalties -- "without proof that the particular intrastate activity against which a sanction was laid had an effect on commerce." Perez v. United States, 402 U.S. at 152; Russell v. United States, 471 U.S. 858 (1985); Wickard v. Filburn, 317 U.S. at 127-128. It has also been considered important to the Commerce Clause analysis that the problem Congress is addressing is national in scope and

exceeds the ability of a single state or local jurisdiction to solve it. See Paraz v. United States, 402 U.S. at 150 (noting that organized crime operates on a national scale and, therefore, Congress can regulate local loan sharking activity); Katzenbach v. McClung, 379 U.S. at 301 (noting as justification for enactment of the Civil Rights Act of 1964 testimony before Congress that racial discrimination is a problem of nationwide scope).

S. 636 falls easily within the commerce power. Just as Congress had authority in the Civil Rights Act of 1964 to prohibit racial discrimination in public accommodations because it artificially restricted the market and the flow of merchandise, Katzenbach v. McClung, 379 U.S. at 299-300, and, on the same basis to make criminal racially motivated assaults that interfere with federally protected rights in the Civil Rights Act of 1968, see 18 U.S.C. 245(b), it has authority to prohibit interference with individuals seeking to obtain or provide abortion services.

The provision of abortion services is commerce. The entities that provide these services, including clinics, physician's offices, and hospitals, purchase or lease facilities, purchase and sell equipment, goods, and services, employ people, and generate income. Not only do their activities have an effect on interstate commerce, but they engage directly in interstate commerce. It should be easy to document that they purchase medicine, medical supplies, surgical instruments, and other supplies produced in other states.

Moreover, it is well-established that many serve significant

numbers of patients from other states. For example, in Bray v. Alexandria Women's Health Clinic, 113 S. Ct. at 762, the Supreme Court accepted the district court's finding that substantial numbers of patients at abortion clinics in the Washington, D.C., area traveled interstate to obtain the services of the clinics. In Wichita, Kansas, the federal district court found that some 44% of the patients at one clinic came from out of state. See New York State NOW v. Tarry, 886 F.2d at 1360 (many women travel from out-of-state to New York clinics). Thus, there can be little doubt that abortion providers are engaged in interstate commerce and Congress should not have difficulty developing a legislative record allowing it to make such a finding.

In addition, it is equally clear that the types of activities that would be prohibited by S. 636 have a negative effect on interstate commerce. As the Committee will hear, clinics have been closed because of blockades and sabotage and have been unable to provide services. Abortion providers have been harassed and frightened into ceasing to perform abortions and, of course, Dr. Gunn, tragically, has been prevented from ever again engaging in this form of commerce. Congress, therefore, should have no difficulty in gathering evidence supporting a conclusion that the conduct prohibited by S. 636 results in the provision of fewer abortions and less interstate movement of people and goods. This situation is analogous to the exercise of the commerce power in passing Title II of the Civil Rights Act of 1964, which was premised on the conclusion that restaurants that discriminated

served fewer customers and, therefore, suppressed interstate commerce. See Karzenbach v. McClung, 379 U.S. at 299-300. Here, however, the justification is even more compelling, since the very purpose of those who engage in conduct that would be prohibited by S. 636 is to suppress the provision of abortion services.

In addition, this Committee should be able to establish that the conduct prohibited by S. 636 has a depressant effect on general business conditions in the areas where these activities occur. Evidence may exist that landlords have been reluctant to lease facilities to abortion providers or that businesses have been deterred from locating near such providers, or that individuals have been deterred from frequenting businesses in those areas.

Therefore, there can be no doubt that evidence exists upon which Congress can base an irrebuttable conclusion that the activity prohibited by S. 636 has an effect on interstate commerce and can be regulated by Congress pursuant to the Commerce Clause. In that regard, I suggest that the Committee expand the findings section of S. 636 to reflect the elements that I have just discussed. I also recommend expansion of the purpose section of the bill to include a statement that it is designed to protect the free flow of goods and people in interstate commerce.

B. Section 5 of the Fourteenth Amendment

The findings section of S. 636 states that the bill is also grounded in Section 5 of the Fourteenth Amendment. That Section grants Congress authority to "enforce by appropriate legislation the provisions of" the Amendment. Section 1 of the Fourteenth

Amendment protects individuals only against actions taken by the states or that can fairly be ascribed to the states. Since United States v. Guest, 383 U.S. 745 (1965), however, there has been a suggestion that even though section 1 of the Fourteenth Amendment reaches only state action, Congress may have power pursuant to section 5 of the Amendment to punish private conduct that interferes with the exercise of a right protected by section 1. Six Justices agreed to that view in dicta in Guest, 383 U.S. at 782 (opinion of Brennan, J., joined by Warren, C.J., and Douglas, J., concurring in part, dissenting in part); id. at 761 (Clark, J., concurring, joined by Black and Fortas, JJ.), and the Court expressed support for an expansive view of congressional authority pursuant to Section 5 in Katzbach v. Morgan, 384 U.S. 641 (1966). The Court, however, has never had occasion to address the question squarely. As a matter of statutory interpretation, it has refused to read 42 U.S.C. 1985(3) as reaching private conspiracies to interfere with rights protected pursuant to section 1 of the Fourteenth Amendment. See Bray v. Alexandria Women's Health Clinic, supra; Carpenters v. Scott, 463 U.S. 825, 831 (1983).

In Bray, the dissenting Justices would have held that an action against a private conspiracy to prevent law enforcement officials from protecting women who are exercising the right to have an abortion would be prohibited by 42 U.S.C. 1985(3). Justice Stevens explained that a conspiracy to interfere with the ability of law enforcement officers to perform their duties necessarily involves sufficient involvement with the state to trigger the right

to an abortion. Under this theory, a finding that anti-abortion activists intend to divest law enforcement officers of their ability to perform their duties might give Congress authority to address such activities even without the need to adopt the broad analysis of Guest.

Thus, the power of Congress to enact S. 636 pursuant to Section 5 of the Fourteenth Amendment is less clear than its authority pursuant to the Commerce Clause. At this point, it is unclear how the jurisprudence of Section 5 will develop. It may well turn out that Congress has authority to enact this legislation pursuant to Section 5, but in the event that it does not, we urge Congress to make explicit that the Commerce Clause is an independent and adequate basis for the legislation, regardless of Section 5.

S. 636 is Consistent with the First Amendment

Our review of S. 636 convinces us that it does not suppress expression in violation of the First Amendment. Rather, S. 636 is a facially valid prohibition of harmful conduct. The bill proscribes four specific types of conduct; (1) the use of force, (2) threats of force, (3) physical obstruction to injure, intimidate, or interfere with an individual seeking access to abortion services, and (4) destruction of the property of medical facilities. The purpose of the legislation plainly is to protect the right of access to abortion services and ensure that interstate commerce is not impeded. By focusing exclusively on forms of conduct that are widely recognized as harmful in the law, the

legislation makes clear that it is not intended to suppress a particular message.

Of course, conduct can express a message and is frequently entitled to First Amendment protection, but the Supreme Court has acknowledged that "[t]he government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word." Texas v. Johnson, 491 U.S. 397, 406 (1989). Therefore, the Court has concluded, "where 'speech and nonspeech elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms' * * * [so long as] the governmental interest in question [is] unconnected to expression." Id. at 407, quoting United States v. O'Brien, 391 U.S. 367, 377 (1969) (upholding a statute prohibiting destruction of a selective service card, even though the public burning of the card was expressive conduct, because the government had a sufficient interest in administering the selective service system that was unrelated to regulation of expression). Indeed, this reasoning is compelled by the fact that it is possible to find some element of expression in nearly any conduct, regardless how harmful the conduct may be to individuals or society. That possibility does not mean that government may not act. Rather, it means that government must have a sufficiently important reason for doing so. Suppression of the use of force, threats of force, physical obstruction, and destruction of property standing alone should supply a sufficient government interest, but

when coupled with the need to do so to preserve the right of a woman to choose to have an abortion, there can be no doubt that the government's reason for acting is sufficiently important to justify any incidental effect on expression.

Indeed, the reasoning of the Supreme Court last Term in R.A.V. v. City of St. Paul, 112 S. Ct. 2538 (1992), confirmed this conclusion. In that case, the Court struck down a city ordinance that prohibited expressions of hatred based on race, color, creed, or gender. It reasoned that the ordinance singled out otherwise permissible speech for censorship because it contained a disfavored message. In doing so, however, the Court reaffirmed that government can proscribe expressive conduct if the government "regulation is justified without reference to the content of the * * * speech." Id. at 2546 (emphasis in the original), quoting Renton v. Playtime Theatres, Inc., 475 U.S. 41, 48 (1986). The Court noted that the wide range of civil rights laws that prohibit conduct that was pursued because of the victim's race, color, religion, national origin, or gender do not violate the First Amendment, even though such conduct often has powerful expressive content, because the "government [has] not target[ed] conduct on the basis of its expressive content." R.A.V. v. City of St. Paul, 112 S. Ct. at 2546-2547.^{2/} Rather, government has acted to

^{2/} See, e.g., 42 U.S.C. 2000e-2 (prohibiting discrimination in employment); 42 U.S.C. 1981 (prohibiting racial discrimination in making and enforcing contracts); 42 U.S.C. 1982 (prohibiting racial discrimination in the sale or rental of property); 42 U.S.C. 1973 (prohibiting discrimination in voting); 18 U.S.C. 242 (making criminal the imposition under color of law different penalties (continued...))

protect the rights of individuals to be free of the invidious harm inflicted by discrimination.

S. 636 fits easily within this analysis. It addresses traditionally proscribable conduct -- the use of force, threats of force, physical obstruction, and destruction of property -- not because of its expressive content, but because -- and only if -- it injures, intimidates, or interferes with an individual's access to abortion services or results in the destruction of property. The bill, therefore, is valid because it does not target conduct on the basis of its expressive content, but is an effort to protect individuals in the exercise of their right to choose an abortion and to eliminate the harmful effect on interstate commerce resulting from interference with the exercise of that right. That justification is surely sufficient to override any incidental effect that the bill may have on expression.

Similarly, the fact that S. 636 singles out only those individuals who act with the required intent is not an indication that it disfavors certain expression. Rather, the intent requirement is a means of defining the interest that government can legitimately protect and is seeking to protect through enactment of S. 636. See Cox v. Louisiana, 379 U.S. 559, 560 (1965) (upholding a Louisiana statute prohibiting picketing near a courthouse "with the intent of interfering with, obstructing, or impeding the

2/ (...continued)
because of the victim's race); 18 U.S.C. 245(b) (prohibiting force or threat of force to interfere because of race with the victim's exercise of federal rights).

administration of justice). In this regard, S. 636 resembles numerous federal statutes that prohibit intimidating or interfering with an individual who is engaged in a federally protected activity.^{2/}

S. 636 is narrowly tailored to accomplish its legitimate goal. Through the limitations imposed by the intent requirement and the specifically described conduct that is prohibited, S. 636 avoids unnecessary restriction of expressive conduct. Nor is S. 636 vague. Men and women of common intelligence will have little difficulty discerning what conduct it prohibits. Certainly proscriptions on the use of force, threats of force, physical obstruction, and destruction of property are sufficiently clear and well known in the law that they will not cause confusion.

S. 636 Needs Only Minor Changes

As I stated earlier in my testimony, S. 636 is an outstanding

^{2/} See, e.g., 18 U.S.C. 112(b) (making it unlawful to "intimidate[], coerce[], threaten[] or harass[] a foreign official * * * in the performance of his duties"); 18 U.S.C. 245(b) (providing "[w]hoever * * * by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with -- any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from [exercising certain designated rights] violates the law"); 18 U.S.C. 372 (making it unlawful to "conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office"); 18 U.S.C. 594 (prohibiting actual and attempted intimidation, threats and coercion "for the purpose of interfering with the right of [a]nother person to vote or to vote as he may choose"); 18 U.S.C. 1503 (providing "whenever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror * * * on account of any verdict or indictment assented to by him" violates the law); 42 U.S.C. 3631(a) (making it a crime for any person to interfere with housing rights "because of [a person's] race, color, religion, sex, handicap * * * familial status * * *, or national origin").

bill, which I heartily endorse, but it can be improved. First, I have already mentioned that the findings and purpose sections should be expanded to describe the connection of the bill to interstate commerce and to make clear that a purpose of the bill is to remove impediments to interstate commerce. I have also already urged that the coverage of abortion providers be made more explicit by adding the words "or providing" after "obtaining" in proposed 42 U.S.C. 2715(a)(1)(A).

I also suggest that the enhanced penalty for "second and subsequent offenses" be made applicable even when the defendant has not been previously convicted of a prohibited activity. As currently drafted, proposed 42 U.S.C. 2715 would require a previous conviction before the enhanced penalty provision of proposed 42 U.S.C. 2715(b)(2) would apply. Our concern is that a person who engaged in a series of violations, such as repeated obstruction of abortion clinic entrances, over a period of weeks or even months would not be sentenced as a repeat offender since, in all likelihood, he would not have been indicted and convicted of the prior offenses. Because of the importance that we attach to deterring repeat offenders and the propensity that individuals involved in these activities have demonstrated to engage in repeated violations of the law, we urge deletion of the words "after a prior conviction" from proposed Section 2715(b)(2).

I am concerned by proposed 42 U.S.C. 2715(d), which gives the Secretary of Health and Human Services authority to investigate violations of proposed 42 U.S.C. 2715(a), the prohibited activities

section of the bill. Since violations of this section would constitute criminal offenses, it is appropriate for the Attorney General to conduct such investigations. If the intent of the bill is to allow both the Attorney General and the Secretary to investigate the same conduct with an eye toward criminal and civil proceedings, respectively, I am concerned that the arrangement may lead to confusion, delay, and jeopardized investigations. I, of course, do not intend any slight of the ability of HHS to conduct such investigations. Since the Attorney General must, in any event, assume responsibility for an investigation before it is litigated, and since it is traditionally the role of the Attorney General, employing the resources of the Federal Bureau of Investigation, to investigate conduct that may lead to criminal charges, I strongly urge the substitution of "Attorney General" for "Secretary" in proposed Section 2715(d) or, in the alternative, deletion of proposed Section 2715(d) altogether.

Finally, I suggest elimination of proposed Section 2715(g)(2), which defines Attorney General to include a large number of employees of the Department of Justice. The Department believes that the term "Attorney General" in a statute necessarily includes designees of the Attorney General. I am concerned that if this bill fleshes out the definition, it may undermine our position that other statutes that do not do so should be interpreted to include a broad definition.

S. 636 is a Good Bill

Having told you those few things that I do not like about S.

636, let me tell you about the important features that I do like. First, as I have indicated, the definition of prohibited activities, with the addition of explicit protection for abortion providers, does a very good job of addressing the problem.

The inclusion of both civil and criminal penalties is very important. The civil remedies of injunctions and damages are appropriate as a means of addressing massive blockades. Courts can fashion injunctive relief that will keep clinics operating, yet allow room for the legitimate expression of opinion by demonstrators. Damages are important to compensate those individuals who, seeking to exercise their rights, suffer real harm, whether physical or psychological. And the authorization of statutory damages is appropriate to encourage victims to pursue violations and as a deterrent to violators.

I also think it is very important that the Attorney General have authority to file a civil action. This approach follows the model of other statutes protecting individual rights -- notably the Fair Housing Act -- by shifting the burden of civil enforcement from private victims to the government, which is often better able to pursue such cases and vindicate the enormous interest that our society has in protecting individual rights.

The authorization of criminal penalties is essential. As I stated earlier in my testimony, opponents of the right to choose have escalated the level of their opposition in recent years. They have demonstrated a willingness to break the law and to defy court injunctions. Unfortunately, criminal sanctions, including

imprisonment, appear necessary to deter and punish unlawful conduct, as well as simply to incapacitate some of the more willful and persistent violators. In this regard, I think the elevated terms of punishment for repeat offenders and those who cause bodily injury or death are justified and necessary.

Conclusion

In conclusion, I wish to thank the Chairman for producing such an important and thoughtful bill. I urge this Committee to consider the few changes that I have suggested and then to move expeditiously toward enactment of this essential legislation.

HOUSE OF REPRESENTATIVES, JUDICIARY COMMITTEE
Subcommittee On Crime And Criminal Justice

Hearing On Clinic Access, June 10, 1993, 1:00 p.m.

STATEMENT FOR RECORD

Catherine M. Doyle

I was born and raised in Wisconsin with my parents, two sisters, and brother. For many years, my father sat as a federal district judge in the Western District of Wisconsin. I in turn have practiced law in Wisconsin for twenty years, concentrating on financial planning and probate. I also have been married for twenty years and have two daughters. During those years, I also have taken an active interest in neighborhood safety, social justice, individual liberty, and assuring that a medically safe abortion remains a legal and affordable option available to women who elect on consideration to have one. During the last twelve months specifically, I have been active in defending access to medical clinics that perform abortions, and in helping with peaceful pro-choice activities.

In April 1993, I wrote an opinion column that was published on the editorial page of The Milwaukee Journal quoting extensively from public statements by three local anti-abortion leaders, the Revs. Matthew Trehella and Joseph Foreman, and Monica Miller. My article was published in the wake of the shooting of Dr. David Gunn in

Florida, and the then ongoing crisis at the Branch Davidian compound outside Waco, Texas. I criticized the promotion and tolerance of the use of violence and handguns that Rev. Trewhella and Rev. Foreman, and Ms. Miller, had expressed publicly. Later, Rev. Trewhella and Ms. Miller responded separately to my article in the same column.

My article, coupled with the fact that my older brother is serving currently as the Attorney General of the State of Wisconsin and has prosecuted anti-abortion protesters who break the law, has made me a target of ever increasing criticism, harassment, false accusations and finally obscene threats of physical harm or death from some sectors of the anti-abortion community. A local self-described Christian television and radio broadcast station, WVCY, repeatedly has aired commentary identifying me by name and insinuating that I am an instigator of violence and aggression by pro-choice people. At the clinics, I am subject to frequent catcalls from anti-abortion demonstrators, at varying levels of repugnance. And recently, an obscene physical threat about me was phoned into (and recorded by) the Wisconsin chapter of the National Abortion Rights Action League; two similar threats were phoned into my law firm, one of which was recorded on our answering machine. I understood these as death threats: how else does one view a threat referring

to me as a "cunt" and promising "to bash in my fucking head"?

The threats and most recent broadcast comments followed an accusation by a small group of anti-abortion activists. In general, their claim has it that I confronted a seven-year old girl who was praying outside a clinic on May 15, 1993, cursed her, and then kicked her in the face with all my might. The details have varied with the time and the speaker, but that is the gist of it. I in fact did not do anything of the sort: I never saw the girl at the clinic that day, never spoke to her, and never touched her in any way. The accusation was false in its entirety.

At the request of the Milwaukee County District Attorney's office, the chief judge of Milwaukee County Circuit Court appointed a special prosecutor to review the complaint against me, and to consider a criminal charge. On June 4, 1993, after a police investigation and review by the special prosecutor that lasted over two weeks, the special prosecutor concluded that there was not even probable cause -- let alone credible evidence sufficient to prove the case beyond a reasonable doubt to a jury -- on which to base a criminal charge. He declined to issue any charge.

During the process of the special prosecutor's review, I tendered four videotapes taken at the clinic that day which demonstrated that the incident the com-

plainant and others described could not have occurred. Two of these tapes also showed clearly the complainant's face and behavior (laughing and eating items from a fast food restaurant) within minutes after my supposed attack, belying directly the claims that the complainant had a bruised or swollen face and was crying. Although the anti-abortion demonstrators had several videographers of their own at the scene that day, in the immediate proximity of the supposed attack, they failed to produce even one tape to the police or the special prosecutor in spite of repeated invitations to do so. The statements of the complainant and at least two anti-abortion witnesses associated with her also were inconsistent with the complainant's own prior statements, inconsistent with each other, and inconsistent with some of the scenes indisputably recorded on videotape.

Nevertheless, a local anti-abortion group, Youth For America - Milwaukee, issued and distributed a press release on Sunday, May 16, the day following the alleged kick. The press release is attached to this statement. That was followed by repeated assertions about the alleged incident on WVCY, describing me by name and occupation even though I had not been charged with any offense then, and never was.

I will survive, my brother will survive, and I will continue to defend clinics peaceably as I have for a year now. Surely I have been luckier than Dr. Gunn, for

my assassins used only false words in their statements to the police, to elected representatives, and to the public. But I want this subcommittee to know the truth, and to know that law abiding citizens will welcome the help that the Freedom of Access to Clinics Act will provide in securing the constitutional right to choose an abortion.

Attachment

Dated at Milwaukee, Wisconsin, June 8, 1993.


Catherine M. Doyle

8699M

YOUTH FOR AMERICA - MILWAUKEE®

Phone: (414) 464-PRAY

P.O. Box 1817
Waukesha, WI 53187

Fax: (414) 462-3673

May 18, 1993
For Immediate ReleaseContact: Bryan Longworth at (414) 464-PRAY
Ward Engelke at (414) 463-0567.

Attorney General James Doyle's Sister Ordered into the D.A.'s Office for Kicking a 7 Year Old in the Face Outside an Abortion Clinic in Milwaukee.

Yesterday morning, at approximately 9:30 a.m., ^CKatherine Doyle, the sister of the Attorney General of the State of Wisconsin, engaged in an argument with Ekaterina (Katie) Engelke, a 7 year old girl who knelt in prayer outside a Milwaukee abortion clinic. Mrs. Doyle asserted that Engelke is a puppet of her parents — that she isn't really old enough to know what goes on inside the abortion clinic. Engelke informed Mrs. Doyle that she knows very well what happens inside the clinics. Engelke then asked Mrs. Doyle what she was doing at the abortion mill. Mrs. Doyle responded by saying that she was helping women. Engelke replied, "You are not. You're killing babies." Mrs. Doyle then cursed at the 7 year old and kicked her in the face. Bystanders said the kick was so loud that it could be heard several feet away.

John day shift (8am - 4pm)
When the police officer, Officer Havens, arrived, he did not arrest Mrs. Doyle although Engelke's face was swollen, and four citizens witnessed the assault. Instead, he ordered Mrs. Doyle to appear in the District Attorney's Office Thursday morning, May 20, to see if charges of battery will be brought against her or not.

84th + Brown Deer

ATTACHMENT

HOUSE OF REPRESENTATIVES, JUDICIARY COMMITTEE
Subcommittee On Crime And Criminal Justice

Hearing On Clinic Access, June 10, 1993, 1:00 p.m.

STATEMENT FOR RECORD

Stephen M. Glynn

I am an attorney and partner in the law firm of Shellow, Shellow & Glynn, S.C., the firm with which I have practiced since 1971. I am a Fellow in the American College of Trial Lawyers, and I have been active in local, state and national bar association activities.

I have known Catherine Doyle since 1970 when I met her while clerking for her father, the Honorable James E. Doyle, United States District Judge in the Western District of Wisconsin. She and I and our spouses, both of whom are also lawyers, are friends on both professional and social levels.

When my wife and I returned from vacation on May 30, 1993, we learned that Ms. Doyle had been accused of kicking a 7-year old girl in the face on May 15, 1993. Ms. Doyle was being represented by my partner, Dean Strang, and, as both a friend of Ms. Doyle and an attorney, I participated in the preparation of her case for presentation to the charging official.

In Milwaukee County, where I have practiced law since 1971, it is the practice of the District Attorney's office to offer those accused of crimes the opportunity to present evidence to affect the charging decision. In this

case, a special prosecutor had been appointed at the request of the office of the Milwaukee County District Attorney which had recused itself from participation in the review of criminal charges against Ms. Doyle. The special prosecutor was a Milwaukee lawyer named Michael Steinle who had agreed to review the complainant's and the accused's presentations separately, with the accused going forward on June 4.

Prior to the meeting with Mr. Steinle, I had reviewed the press release of an organization calling itself Youth for America in which certain statements were attributed to the complainant, an audio tape of an appearance by the complainant on a radio program moderated by Joseph Foreman, and an article appearing in a publication called the Christian Interpreter which purported to quote the complainant.

The complainant asserted that she and other children had been kneeling together in prayer, with no one else nearby, when Ms. Doyle, accompanied by no one else, approached the group and engaged the 7-year old complainant, Ms. Ekatrina Engelke in conversation. After a discussion between Ms. Doyle and Ms. Engelke on the subject of abortion, Ms. Doyle was alleged to have used an epithet against Ms. Engelke and then kicked her in the face as hard as Ms. Doyle could. It was claimed that, following this battery, Ms. Doyle walked away while the children remaining kneeling in prayer (although one of the children

with the complainant asserted that Ms. Engelke burst into tears after being kicked). The children claimed they did not report this incident to anyone for 10 to 15 minutes.

In preparation for the meeting with Mr. Steinle, and in conjunction with the meeting itself, I personally reviewed (and later presented for review by Mr. Steinle) all videotapes to which we had access and the testimony of five individuals. This evidence revealed that the claim made by the complainant could not possibly have occurred as described. Ms. Doyle stated that she had engaged in neither verbal nor physical contact with the complainant, and that she had not been by herself from the time she arrived at the clinic in question until the time she was informed of the allegation.

Ms. Doyle is visible on videotape from a time approximately ten minutes before the alleged battery up until a time approximately one or two minutes after the alleged battery except for a period of perhaps ten seconds during which the camera person's view of her was blocked by parked vehicles. During that period, however, she was in the view of witnesses who corroborated her version entirely.

Moreover, circumstantial evidence corroborates Ms. Doyle's version as well. For example, videotape of the alleged victim taken within minutes of the claimed assault reveals her to be a happy, smiling 7-year old waving at the video camera with no marks on her face consistent

with having been kicked. Additionally, a videotape reveals Ms. Doyle, moments after the alleged assault, being blocked in her effort to pursue people fleeing the police after attempting to blockade the entrance to a clinic. Those who are blocking her path are screaming at her, accusing her of having pushed other people. Throughout these accusations, no claim is made that Ms. Doyle kicked a child, although the kicking would have had to occur in the presence of those accusing her of pushing people.

In short, there is no evidence to support the claim made by Ms. Engelke; to the contrary, there is a great deal of evidence demonstrating that the claim made by Ms. Engelke is false. After reviewing all evidence submitted on behalf of both the complainant (who was represented by private counsel) and the accused, the special prosecutor found that there was not even probable cause to issue a criminal complaint. The letter which he wrote to the District Attorney closing the investigation is attached to this statement as Exhibit A.

I personally believe that the Engelke claim is nothing more than an attempt to embarrass Ms. Doyle, her brother (James E. Doyle, Jr., the Attorney General of Wisconsin) and the pro-choice community in Milwaukee. Ms. Doyle has become a lightning rod for the anti-abortion propaganda machine in Milwaukee ever since she wrote a personal opinion column published on the editorial page of the Milwaukee Journal newspaper. That column, which was

written before but published after the murder of Dr. David Gunn in Florida, noted the statements condoning violence that had been made by local anti-abortion leaders. It provoked a dramatic response, and Ms. Doyle was slandered repeatedly over a local self-styled Christian radio station. In fact, the slander grew to such an extent that the radio station, recognizing that the slander constituted "personal attack" within the meaning of FCC rules, provided Ms. Doyle with an audio tape of one of the programs and informed her that the tape was produced pursuant to the personal attack rule of the FCC.

Because their efforts to chill Ms. Doyle's participation in pro-choice activities were unavailing, the anti-abortion leaders, in my opinion, sought to frame Ms. Doyle. Fortunately for her, enough people with video cameras were willing to make their tapes available to her. (Interestingly, although at least four anti-abortion protesters with video cameras are visible on the videotape produced for the special prosecutor, the attorney for the complainant produced no videotape whatsoever to support his client's claim.)

Dated at Milwaukee, Wisconsin, June 8, 1993.



Stephen M. Glynn

*Michael J. Steinle*ATTORNEY AT LAW
3127 West Wisconsin Avenue
Milwaukee, Wisconsin 53208AREA CODE (414)
Office 933-9337
Residence 483-8344
Facsimile 933-8700

COURT COMMISSIONER

Cable Address: Crimview

June 7, 1993

Mr. E. Michael McCann
District Attorney
Milwaukee County Safety Bldg.
821 West State Street
Milwaukee, WI 53233

Re: Complaint Against Catherine Doyle

Dear Mr. McCann:

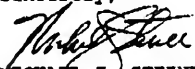
I was appointed by the Chief Judge as the special prosecutor to review the above-entitled matter. After a complete investigation by the Milwaukee Police department and the interviewing of all available witnesses by Officers Havens and myself, I did not process the case and I am closing out the matter. I have come to this decision after examining all the facts and circumstances connected with the case.

I believe that I could not institute criminal charges against Ms. Doyle when the facts and circumstances are not supported by probable cause to believe that she committed a battery to the young Engelke child.

If you have any specific questions of me, I would be more than happy to discuss the matter with you at your convenience.

Thank you kindly.

Sincerely,


MICHAEL J. STEINLE
Attorney at Law

MJS:jgs

EXHIBIT A

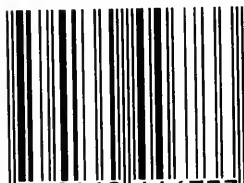
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